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THE INHERITANCE TAX

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THE INHERITANCE TAX

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PREFACE TO THE SECOND EDITION.

In the fourteen years which have passed since the first edition of this study was published, the taxation of inheritances has not only made rapid headway in America, but has become a much more important source of revenue in the principal countries of Europe. High progressive rates in Great Britain, France, Italy, and Germany have increased the public's share of large fortunes to proportions formerly unheard of outside of Australia and Switzerland, the world's economic experiment stations. Even in the United States several states have adopted progressive scales which make large fortunes passing to distant relatives pay very respectable percentages, and in many cases even direct heirs are now required to pay something.

When it became necessary to reprint this number of the Studies, therefore, I was unwilling that it should be done until I could find time to look over the recent statutes, or at least the more important of them, and make the statements of fact correspond with present conditions. This has been no slight task, for there is no complete index of foreign legislation. I have had access to the admirable collection of laws and commentaries in the Library of Congress, and have taken advantage of the compilations and comments of Professor Schanz in *Finanz-Archiv;* but I shall not again undertake to report on the world's legislation on any subject

until Congress heeds Mr. Putnam's repeated suggestions concerning the need of indexing and summarizing foreign legislation, or until some public-spirited millionaire adopts the idea as a means of prepaying his death duties.

The term *inheritance tax* is used in this monograph to mean any tax on the devolution of property, real or personal, either by will or by intestacy. *Succession tax* is essentially a synonymous term, and is so used with reference to most countries, but in Great Britain and the United States it has acquired a more restricted meaning. By a *collateral-inheritance tax* is meant one applying only to collateral heirs and strangers in blood, or one from which direct descendants at least are exempt.

I have used a number of other expressions in the popular rather than the strictly legal sense. Thus, in using the words *inheritance* and *succession* as applying to the property received, and the corresponding words *heir* and *successor*, I have disregarded the legal distinctions between testacy and intestacy, and between realty and personalty. At times I have distinguished between the rights of *inheritance* and *bequest;* but these terms also are applied to both real and personal property.

I have incorporated in this edition the substance of certain articles previously published, namely in the *Political Science Quarterly* for September, 1893, in the *Journal of Political Economy* for September, 1898, and in the New York State Library's annual *Review of Legislation*.

As the Library of Congress has recently issued a carefully-prepared list of works relating to taxation of inheritances and of incomes, it has seemed unnecessary to reprint the bibliography in this edition.

M. W.

WASHINGTON, *September, 1907.*

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"If I mistake not, a conspicuous characteristic of our century has been the rapid multiplication of the idle rich. In the conditions of modern life it is quite possible for a man to have a colossal fortune in forms that require absolutely no labour, and bring with them no necessary or obvious duties. . . . Wealth which brings with it no ties and is obtained and enjoyed with no effort is to most men a temptation and a snare. All the more dissipated capitals and watering-places of Europe and America are full of examples of men in this position, living lives of absolute frivolity, dissociated from all serious interests, ever seeking with feverish eagerness for new forms of pleasure, raising the standard of luxury and ostentation, and often, in still graver ways, depressing the moral tone of the society in which they live."—W. E. H. Lecky, *Democracy and Liberty.*

"Experience has taught me that great fortunes acquired by inheritance never bring happiness, they only dull the faculties. Any man possessing a large fortune ought not to leave more than a small part of it to his heirs, not even to his direct heirs—just enough to make their way in the world."—Alfred Nobel.

"There is every reason why, when next our system of taxation is revised, the National Government should impose a graduated inheritance tax, and, if possible, a graduated income tax. The man of great wealth owes a peculiar obligation to the State, because he derives special advantages from the mere existence of government. Not only should he recognize this obligation in the way he leads his daily life and in the way he earns and spends his money, but it should also be recognized by the way in which he pays for the protection the State gives him."—President Roosevelt, Message of December 4, 1906.

CHAPTER I

ORIGINS

I. Egypt and Rome

The origin of the inheritance tax has usually been attributed to the Emperor Augustus, who is known to have established such a tax at Rome in the year 6 A. D. Some writers have expressed the belief that a similar tax was imposed nearly two centuries earlier, by the Voconian law limiting the power of bequest; but of this there is no conclusive evidence. If such a tax was introduced at that time it was of short duration. Octavian and Antony, at the time of the war against Pompey, attempted to impose a tax on testamentary dispositions of property, but the proposal was indignantly rejected by the Roman people.

It seems probable that the Romans borrowed the idea of the inheritance tax from the Egyptians, with whose financial and administrative methods they were well acquainted by the close of the Republic. There is evidence that Egypt had some sort of an inheritance tax at this time, of which the rate was probably not less than a tenth, and from which not even direct heirs were exempt. A papyrus has been found which relates that a certain Hermias was sentenced to pay a heavy penalty for failing to pay the tax on succeeding to his father's house. Another inscription records a sale of property by an old man to his sons at a nominal price, apparently for the purpose of evading the inheritance

tax.[1] The organization of Egyptian society was such that this exaction must have been more nearly akin to a feudal incident than to a modern tax; yet it seems to have formed part of a system of impositions on transfers of property in general, which has been traced back to the reign of Psametichus I (654-616 B. C.) Not until 117 B. C. do we find the charge on successions specifically mentioned, but it is perhaps worthy of note that in the Egyptian wills of the third century B. C. which have been preserved the king and queen were always appointed executors.

Concerning the Roman tax our knowledge is much less fragmentary.[2] Having fixed a definite term for military service, Augustus determined to create an *ærarium militare* —a special fund the object of which was probably not the support of the standing army, as has been supposed, but the pensioning of veterans.[3] The Emperor contributed large sums to this fund from his own fortune, and then requested the Senators to submit plans for raising the remainder of the revenue required. He doubtless wished them to realize the difficulty of the problem of taxation before making known his own project; at any rate, he rejected their proposals and introduced a tax of one-twentieth upon inheritances and bequests. Augustus claimed to have found this tax proposed in the papers of Cæsar; but notwithstanding

[1] Lumbroso, *Recherches sur l'économie politique de l'Égypte*, pp. 307 *et seq.*

[2] Dio Cassius, Ῥωμαϊκὴ Ἱστορία, lib. lv, chap. 25; lib. lvi, chap. 28; lib. lxxvii, chap. 9; Plinius, *Panegyricus*, xxxvii-xl; Perez, *Praelectiones in Duodecim Libros Codicis Justiniani*, lib. vi, tit. 33; Cagnat, *Les impôts indirects chez les Romains*, IIIe partie; Clamageran, *Histoire de l'impôt en France*, i, 78; Pauly, *Real-encyclopädie der classischen Alterthumswissenschaft*, vi, 2579; Gibbon, *Decline and Fall of the Roman Empire*, chap. vi; *etc.*

[3] Cagnat, *op. cit.*, p. 181.

this high authority he was for some time unable to obtain the approval of the Senate. Again he called upon the Senators to devise a better tax, and when they were unable to do so he threatened a general land tax, and even sent out agents to take a census of landed property. This stratagem proved effective; the Roman people, long exempt from direct taxation, had no desire to see the land tax reimposed, and the Senate at length approved the Emperor's original measure.

The *vicesima hereditatium* [1] applied only to Roman citizens. Small amounts were exempt, and allowance was made for funeral expenses, but bequests for public statues and temples were subject to the tax. Among the old citizens of Rome, Augustus exempted the nearest relatives; no such immunity was granted those newly admitted to citizenship, unless they had also obtained rights of cognation. This discrimination was maintained for nearly a century. Nerva (96-98 A. D.) recognized that the closest of natural ties were superior to the artificial distinctions of the Roman law; he exempted successions between mother and child, even when no rights of cognation had been granted, and the patrimony of sons over whom the father had acquired *patria potestas.* Trajan (98-117 A. D.) completed the reforms of his predecessor by extending the exemption to all sons, whether or not they had been in the *patria potestas,* and to fathers, grandparents and grandchildren, and brothers and sisters. These exemptions were probably no more than the old citizens had already enjoyed; they were intended to put all citizens on an equal footing. To hasten this result, Trajan cancelled all debts to the treasury which

[1] More often spelled *hereditatum;* but the form of the genitive given in the text is that found in the inscriptions wherever the word is not abbreviated.—Cagnat, p. 175, note.

were due to the discriminations of the old law. These generous acts of the Emperor were immortalized in a symbolical bas-relief, which was discovered at Rome some eighteen centuries later.

At the time of Hadrian (117-138 A. D.) it was found necessary to limit the deduction to be made for funeral expenses, and it was decided that the exemption should not apply to extravagant sums spent for monuments. Marcus Aurelius (161-180 A. D.) also introduced some change in the law, but the nature of his amendment is not known.

Very radical changes were wrought by Caracalla. The *vicesima* was a fruitful source of revenue, but Caracalla doubled the rate and abolished the exemptions in favor of near relatives. To increase the revenue still further, in 212 A. D. he extended Roman citizenship, and with it liability to the inheritance tax, to all the free inhabitants of the whole Empire. This extension of citizenship was permanent, but the old rate and exemptions were restored by Macrinus (217-218 A. D.).

It is impossible to say just when the Roman inheritance tax was repealed. It existed as late as the reign of Gordian III (238-244 A. D.), but it had disappeared before the time of the Justinian Code.[1] It may have been abolished by Diocletian; perhaps by Constantine the Great; perhaps by Justinian himself.

The *vicesima hereditatium*, like other Roman taxes, was at first farmed out to the publicans, but from the time of Hadrian it was collected directly by the *procuratores XX hereditatium* under the supervision of a central bureau at Rome. Care was taken to collect the tax without loss of time; only a few days were allowed to elapse between a death and the opening of the will. Even when the will

[1] *Codex Justin.*, vi, 33, 3.

was contested, Hadrian decreed that the heir named in the will should be put in temporary possession and pay the tax, after which the contest might proceed. The Romans used a simple mortality table or formula in determining the value of life estates.

II. The Middle Ages

In the middle ages the inheritance tax is represented by the *relief* and *heriot* of feudal tenure, together with some other feudal charges of a similar nature. The *relief* was a payment made to the lord by the heir of a deceased tenant on being admitted to the succession. The original theory seems to have been that at the tenant's death the fief in some sense escheated to the lord, who exacted a contribution in return for permitting the heir to take possession; and this was called (in Latin) *relevium,* because it raised up and re-established the inheritance, which had fallen in, and was uncertain at best.[1] To be sure, this may have been merely a pretext for extortion, without regard for the terms on which the fiefs were originally granted. Hallam looks for the real origin of reliefs

> in that rapacity with which the powerful are ever ready to oppress the feeble. When a feudal tenant died, the lord, taking advantage of his own strength and the confusion of the family, would seize the estate into his hands, either by right of force or under some litigious pretext. Against this violence the heir could, in general, have no resource but a compromise; and we know how readily acts of successful injustice change their name, and move demurely, like the wolf in the fable, under the clothing of law.[2]

[1] "Incertam et caducam hereditatem relevabat." — Blackstone, *Commentaries*, ii, 56.

[2] *Middle Ages*, bk. ii, pt. I.

At all events, reliefs continued to be paid after the hereditary character of feudal tenures had become well established. The payment was either in money or in equipments, and was at first arbitrary in amount, so that by demanding an exorbitant relief the lord could practically disinherit the heir; but in England it came to be fixed at one hundred shillings for a knight's fee, or one-fourth of the supposed value of the land. William the Conqueror (1066-1087) is credited with having first fixed the amount of the relief, but his rules were not followed by all of his successors, and excessive reliefs were again among the chief grievances alleged in 1215. One of the first clauses of Magna Carta regulated the amount of the charge, as follows:

> If any of our earls, or barons, or others, who hold of us in chief by military service, shall die, and at the time of his death his heir shall be of full age, and owe a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an earl, for a whole earldom, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knight's fee, by a hundred shillings at most; and whoever oweth less shall give less, according to the ancient custom of fees.
>
> But if the heir of any such shall be under age, and shall be in ward when he comes of age, he shall have his inheritance without relief and without fine.

A socage relief was one year's rent. In knight service the relief was payable only if the heir was of full age, as otherwise the lord was entitled to wardship; but in socage this rule did not apply.[1] In France, the *relief* or *rachat* was usually one year's net produce; in many provinces successions in the direct line were exempt, the relief being con-

[1] Blackstone, *Commentaries*, ii, 65, 87.

sidered the means by which collateral relatives bought themselves into a succession to which they were not originally entitled. In the case of lands held by base tenure (*la terre roturière*) the corresponding exactions were generally known as *lods et ventes.*[1] *Primer seisin*, in England, was another burden somewhat similar to relief, but was due only to the king from his immediate vassals.[2]

Heriots (from *heregeatu*, military trappings), originally voluntary donations or legacies from the tenants to their lord, by long usage became unavoidable. Compulsory heriots were established in England by the Danes, and King Knut (1016-1035) enacted that in cases of intestacy the lord should take no more than his rightful heriot; the heriot of an earl, for example, being eight horses and a corresponding quantity of equipments and gold. In general, the heriot came to consist of the best beast or other chattel of which the tenant died possessed; though in some cases there was a customary composition in money, as ten or twenty shillings, which was binding on both parties. The *farleu,* in Scotch law, was a payment of money or goods in lieu of heriot.

At times the heriot seems to have been confused with and even absorbed in the relief, although in theory the two exactions were quite distinct. In the heriot of the later middle ages Pollock and Maitland find no less than four ideas: (1) the warrior to whom arms and equipment were loaned by the lord should return them at his death; (2) the peasant who received his stock from his lord should likewise return it, or if his heirs were allowed to keep it, they

[1] Vuitry, *Le régime financier de la France*, i, 277, 279; Clamageran, *Histoire de l'impôt en France,* p. 208; Mayer, *Deutsche und französische Verfassungsgeschichte vom 9. bis zum 14. Jahrhundert,* ii, 168.

[2] Blackstone, *Commentaries*, ii, 66.

must recognize the lord's right by giving up the best beast; (3) all the chattels of a serf belonging in strictness of law to his lord, the best of them was taken to manifest the lord's right; or as Blackstone remarks, the heriot was perhaps in acknowledgment of the tenant's having been raised a degree above the villeinage in which his chattels were quite at the mercy of the lord; (4) in the infancy of testamentary power it was prudent, if not necessary, that the testator should purchase that favor of his suzerain without which his bequests would hardly stand. These exactions survived in England, in some tenures, down to quite modern times. After the middle of the eighteenth century, Blackstone wrote of Danish heriots, transmuted into reliefs, frequently remaining in socage tenure in the form of a double rent payable at the death of a tenant; and likewise of existing copyhold heriots of Saxon origin.

Mortuaries were a sort of ecclesiastical heriot expected or demanded in many parts of England and the continent. As the lord was "recognized" with the best chattel, the church was considered entitled to the second best, or in some cases the third best; and according to ancient usage this was carried to church when the corpse was taken to be buried, from which it was sometimes known as a *corse-present.* It is said on good authority that mortuaries were intended to make amends for the tithes and other ecclesiastical duties which laymen may have neglected to pay during life, and in France those who died without bequeathing anything to the church were said to die *without confession,* and in ancient times were deprived of Christian burial. Henry VIII fixed the amount of the mortuary to be paid by each householder strictly according to the value of his goods, exempting those leaving less than ten marks' worth, and prescribing payments of 3s. 4d., 6s. 8d., or 10s., according as the value of the property was between ten

marks and thirty pounds, between thirty and forty pounds, or above the latter figure; except, indeed, where less or nothing at all was due by custom.

Unlike the relief, the heriot was a charge upon the chattels only, and not upon the land.[1] Another distinction sometimes made is that the heriot was considered as being paid by the dead tenant, the relief by his successor.[2] This difference between them has been compared to that between the modern English probate duty, paid before the settlement of the estate, and the legacy and succession duties, paid by the heirs after the estate has been distributed.[3]

III. Periods of Transition

Just what relation these feudal incidents bear to the *vicesima hereditatium* is not easy to determine. It has been supposed by some that the relief was derived from the Roman tax,[4] but the supposition appears to be unwarranted. The *vicesima* was abolished perhaps as early as the third century, and certainly before the middle of the sixth; there is no evidence that anything corresponding to it existed through the Dark Ages,[5] and the relief was a very different kind of exaction, both in theory and in practice. Its connection with the *vicesima* cannot have been very direct, and it seems more probable that it was feudal in its origin as in its nature.

Between the feudal dues and the modern inheritance taxes, on the other hand, a direct connection can be traced in some countries. It is true that in England there is no

[1] Blackstone, *Commentaries*, ii, 97, 422; Pollock and Maitland, *History of English Law*, bk. ii, chap. i, § 7.

[2] Kemble, *The Saxons in England*, 1: 179.

[3] Dowell, *History of Taxation and Taxes in England*, 3: 138.

[4] Vuitry, *Le régime financier de la France*, 1: 281.

[5] Clamageran, *Histoire de l'impôt en France*, 1: 168.

direct historical connection between them, but it seems quite certain that in some parts of the Continent, at least in France, the inheritance tax grew out of the relief. "But fiscal institutions, like others, obey the universal law of evolution. From the feudal incident in which it originated, the succession tax was transformed, in time, first into a royal due, then into a public contribution collected for the benefit of the treasury of the State." [1]

In other places, the modern taxes on inheritance seem to have been modeled rather upon the Roman tax than upon feudal exactions. During the latter part of the sixteenth and the early years of the seventeenth century various European scholars called attention to the *vicesima hereditatium* and recommended its imitation; [2] and inheritance taxes were actually imposed during this period in several provinces of Germany and the Netherlands. [3]

In the cities of Italy, where also a knowledge of Roman law may be presumed to have survived or been revived, inheritance taxes began to make their appearance before the close of the fourteenth century: at Genoa (2 per cent) in 1395, and at Florence, apparently at about the same time. At Venice a 5 per cent collateral-inheritance tax was imposed in 1565; a few years later bequests for benevolent

[1] Besson, "La progression des valeurs successorales au XIXe siecle," *Journal de la Société de Statistique de Paris*, 40: 144 (May, 1899).

[2] Among these were Johann Sturm, rector of the gymnasium at Strasburg; Justus Lipsius, the Flemish philologist; Georg Obrecht, the jurist; and Christoph Besold, who has been called Germany's greatest publicist during the first half of the seventeenth century, and who is thought to have influenced certain future rulers.

For a full account of this period, see Schanz, "Studien zur Geschichte und Theorie der Erbschaftssteuer," *Finanz-Archiv*, 17: 37-62. Obrecht's writings are reviewed also in Roscher's *Geschichte der National-Oekonomie in Deutschland*, pp. 151-158.

[3] See pp. 32 and 47, *infra*.

purposes and those very small in amount were exempted. The Duchy of Mantua, under the Gonzagas, also had a collateral-inheritance tax.

Before passing on to modern times, mention may be made of a curious medieval exaction of a non-feudal character, though similar in theory to the relief, which existed in Germany, Denmark, and France. It was known in Germany as *Erbkauf*, or inheritance-purchase, and in most places was enforced only when there were foreign or absent collateral heirs. The property of childless citizens fell at their death to the magistrate of the town, who delivered it to the distant heirs only in case the decedent had purchased the right of inheritance for them by payment of the prescribed fee.

CHAPTER II

FRANCE

I. Historical Development

The feudal exactions on transfers of property, including transfers from the dead to the living, seem to have become established as national taxes in France in the sixteenth century. In 1553 the formality of *insinuation* or registration,[1] first introduced in a limited way in 1539, was extended by Henry II to include testamentary dispositions, sales, and certain other transactions, which were thus made subject to the tax demanded for the registry. In 1703 Louis XIV made all transfers of immovables, either among the living or at death, except those in the direct line, subject to *insinuation* and the accompanying one per cent tax known as the *centième-denier*. Until the Revolution, testamentary dispositions were subject both to *insinuation* and to the *droit de contrôle*.

The French inheritance taxes of modern times form part of the system of *droits d'enregistrement*,[2] or registration taxes. The original rates, prescribed in the law of *22 frimaire an VII*, were less for movable than for immovable property; but this distinction was afterward abolished, and the rates were complicated by the addition of *décimes* analogous to the *sous pour livre* formerly added to the *droit de contrôle* and the *centième-denier*. The first *décime* was added to the registration taxes a few months after the passage of the original act, as a war measure; but it was

[1] *Dictionnaire des finances*, 2: 392.

[2] *Ibid.*, 2: 88.

continued in force for more than a hundred years, and further additions were made from time to time.[1] During the latter part of the nineteenth century the rates, including two and a half of these *décimes additionels,* were from one and one-fourth per cent for direct heirs to eleven and one-fourth per cent for strangers in blood. Besides this proportional tax, there was a uniform registration tax on wills (historically the successor of the *insinuation* and *contrôle* to which testaments were subject under the old *régime*), as well as other registration and stamp taxes bearing some proportion to the judicial proceedings employed, but not necessarily to the amount involved, and so falling most heavily on small estates. Altogether, the government often took as much as fifteen or twenty per cent of the value of a succession.[2] The three taxes together constituted practically a system of regressive taxation, from which no relief was granted by exempting small amounts, as in most other countries. Moreover, France was also an exception to the almost universal rule in that no deduction was allowed for debts. This gave rise to much hardship and great dissatisfaction. Said Leroy-Beaulieu, "*Il est impossible de voir un plus monstrueux abus de la force publique.*" Forced sales of property were often necessary in order to pay the taxes due on the death of the owner. Still another source of complaint was the mode of levying the tax on usufructuary and reversionary owner. The former paid the tax on one-half the value of the property, without regard to his probability of life; and the latter paid at once on the whole value of the property, just as if he had acquired immediate possession.

Repeated attempts were made to remedy these evils.

[1] *Annales de l'Assemblée Nationale,* 1871, tome iv, annexe 407.

[2] Leroy-Beaulieu, *Science des finances*, 5th ed., 1: 515-517.

Commissions were appointed to consider the deduction of debts, and the matter frequently came before the legislature; but for many years the reform was prevented by the fear of loss of revenue, estimated at forty million francs a year. The existing rule was sometimes defended also on the ground that movables sometimes escaped the tax by concealment or undervaluation. Unsuccessful attempts were also made to divide the tax between usufructuary and owner according to the age of the former; and incidentally, it was proposed to limit intestate inheritance to six or eight degrees of relationship, instead of extending it to twelve degrees. From a fiscal point of view, this change would not only have increased the number of escheats, but would have raised the tax rate for many distant relatives from ten to eleven and one-fourth per cent, the rate which applied where there was no right of intestate inheritance.

II. The Progressive Tax of To-day

After prolonged discussion, a progressive inheritance tax was voted in 1895 by the Chamber of Deputies, and in 1898 by the Senate; but it took three years more to harmonize the differences between the two chambers. Thus it remained for the budget law of 1901 [1] to establish progressive rates, as well as to correct the chief abuse of the earlier legislation by providing for the deduction of clearly proven debts. By this law the rates on inheritances and legacies below two thousand francs in value were fixed at one per cent for direct heirs, three and three-fourths per cent for the surviving husband or wife, eight and one-half per cent for brothers and sisters, and from ten to fifteen per cent for more distant relatives; while for amounts in excess of one million francs the rates were graduated according to relationship from two and one-half to eighteen and one-half per cent, as shown in the following table:

[1] Loi du 25 fev. 1901.

	1 to 2000 francs.	2001 to 10,000 francs.	10,001 to 50,000 francs.	50,001 to 100,000 francs.	100,001 to 250,000 francs.	250,001 to 500,000 francs.	500,001 to 1,000,000 francs.	Over 1,000,000 francs.
	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
Direct line	1	1.25	1.50	1.75	2	2.50	2.50	2.50
Husband or wife	3.75	4.00	4.50	5.00	5.50	6.00	6.50	7.00
Brothers and sisters.......	8.50	9.00	9.50	10.00	10.50	11.00	11.50	12.00
Uncles and aunts, nephews and nieces.............	10.00	10.50	11.00	11.50	12.00	12.50	13.00	13.50
Great-uncles and great-aunts, grand-nephews and grand-nieces, cousins-german	12.00	12.50	13.00	13.50	14.00	14.50	15.00	15.50
Relatives of the 5th and 6th degrees	14.00	14.50	15.00	15.50	16.00	16.50	17.00	17.50
Relatives beyond the 6th degree and strangers in blood	15.00	15.50	16.00	16.50	17.00	17.50	18.00	18.50

The following year [1] the progressive principle was extended to still larger amounts as shown below, the maximum rates being increased to five per cent for direct heirs and twenty and one-half per cent for strangers. The former maxima were applied to amounts between one and two million francs, except that the rate for direct heirs was increased to three per cent in such cases:

	1,000,001 to 2,000,000 francs.	2,000,001 to 5,000,000 francs.	5,000,001 to 10,000,000 francs.	10,000,001 to 50,000,000 francs.	Over 50,000,000 francs.
	Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
Direct line	3.00	3.50	4.00	4.50	5.00
Husband or wife	7.00	7.50	8.00	8.50	9.00
Brothers and sisters	12.00	12.50	13.00	13.50	14.00
Uncles and aunts, nephews and nieces	13.50	14.00	14.50	15.00	15.50
Great-uncles and great-aunts, grand-nephews and grand-nieces, cousins-german	15.50	16.00	16.50	17.00	17.50
Relatives of the 5th and 6th degrees	17.50	18.00	18.50	19.00	19.50
Relatives beyond the 6th degree and strangers in blood	18.50	19.00	19.50	20.00	20.50

The value of usufructs and of reversionary interests is calculated in the following manner: If the usufructuary is less than twenty years of age, a life interest is deemed to be worth seven-tenths and the reversionary interest three-tenths of the value of the property. Above that age the value of the usufruct is diminished and that of the reversionary interest increased one-tenth for each period of ten years, up to the age of seventy years, beyond which age the usu-

[1] Loi du 30 mars 1902.

fruct is uniformly valued at one-tenth. A usufruct for a fixed period is calculated at two-tenths of the value of the property for each ten years of the duration of the usufruct.

While the French statutes make no provision for exempting small inheritances, it has been decided that alms given by will are exempt from the succession tax.[1]

III. Incidental and Supplementary Taxes

There are still various minor taxes incidental to the settlement of an estate: the will is subject to a uniform registration duty of 9 francs 37½ centimes, including the existing *décimes;* when legacies are released by the heir-at-law, even if the release is verbal, a proportional tax of twenty-five centimes per hundred francs of the amount or value of the legacy is payable; partitions of legacies made to two or more persons jointly are subject to a tax of 18¾ centimes per hundred francs; and there are stamp taxes on the various legal papers used, including the will (although it pays registration duty also), the amount of which varies according to the number and length of such documents employed in each particular case. Heirs must even pay for the printed forms on which they are required to declare their inheritances. These incidental charges are of little consequence in the settlement of large estates, but may easily absorb five or six per cent of a small property.[2]

The taxes on the transfer of property at death are supplemented by taxes on gifts and on lands held by corporations. The tax on gifts is still a proportional tax, but it varies not only according to relationship, but also according to the occasion of the gift, special favor being shown

[1] Wahl, *Traité de droit fiscal*, p. 341.

[2] Baudry-Lacantinerie, *Traité de droit civil*, 2d ed., 10: 442, 485, 486; Wahl, *Traité de droit fiscal*, p. 478.

to partitions among the donors' children or descendants and to marriage contracts. The rates for direct heirs are 1.7 per cent in case of partition, two per cent by marriage contract, and 3½ per cent in other cases. Other than direct heirs pay at the following rates:

	By marriage contract. *Per cent.*	*In other cases.* *Per cent.*
Husband or wife	3.5	5
Brothers and sisters	7	9
Uncles and aunts, nephews and nieces	8	10
Great-uncles and great-aunts, grand-nephews and grand-nieces, and cousins german	9	11
Relatives of the fifth and sixth degrees	10	12
More distant relatives and strangers in blood	11	13.5

Both gifts and legacies to departments and to communes, in so far as they are assigned by the donor to works of assistance, and gifts and legacies to public charitable establishments, societies of mutual aid, etc., and to societies of free instruction and of popular education receiving subventions from the state, are subject to a proportional tax of nine per cent.

The tax on the immovable property of corporations was introduced in 1849, to complete the system of taxes on the transfer of property. It was argued that corporations rarely alienated their lands, and never died; they should therefore pay a tax equivalent to a year's rental as often as other lands were transferred on the average, or once in twenty years. So the law provided for an annual tax of about one-twentieth of the rental value. For convenience, the amount of the tax was to be found by multiplying the land tax (*contribution foncière*) by .625, which gave a product slightly in excess of five per cent of the annual rental. The multiplier was afterwards raised to .7, and

two and a half *décimes* were added, making it .875. This tax is payable in addition to the land tax on lands belonging to all legally authorized organizations, including incorporated companies, religious congregations, charitable institutions, and even the departments and communes. But companies organized for the exclusive purpose of buying and selling land are not required to pay this tax on lands which are intended to be sold.[1]

In all civil societies or associations which admit new members, the accretions or increments of property (*accroissements*) falling in consequence of clauses of reversion from the shares of those ceasing to take part to the profit of the remaining members were subjected in 1880 to the succession tax in the case of accretions by death, and to the tax on gifts in the case of those effected otherwise. This *droit d'accroissement* was afterward converted into an annual tax on the gross value of the property, movable and immovable, held by religious congregations, communities and associations, whether authorized or not, and by other societies and associations which do not distribute their profits in whole or in part among their members. Property acquired with the authorization of the Government, in so far as it has been appropriated and continues to be really devoted either to works of free assistance in behalf of the infirm, the sick, the poor, orphans, or abandoned children, or to the work of French missions abroad, is exempted. This tax, which is not subject to *décimes,* is fixed at 30 centimes per hundred francs of the gross value of the property; but the rate is increased to 40 centimes for landed property held by those congregations, communities, and as-

[1] Lois du 20 fév. 1849, du 30 mars 1872, du 20 déc. 1872, et du 30 déc. 1873.

sociations which are not subject to the mortmain tax established in 1849.[1]

IV. Revenues and Proposed Increase

In 1890 the tax on successions amounted to 191,171,820 francs, showing an increase of more than 20,000,000 francs over the previous year. At the time, the increase was ascribed in part to the epidemic of influenza which prevailed during a part of the year; but the receipts for succeeding years showed a continued increase, rising to 225,000,000 francs even before the law of 1901 was enacted, and to 262,959,500 francs in 1905. The product of the tax on gifts varies but little from year to year; it approximates 23,000,000 francs. The receipts from both taxes for the years 1903-1905 are shown below:

	1903. *Francs.*	*1904.* *Francs.*	*1905.* *Francs.*
Tax on successions	233,104,500	243,890,500	262,959,500
Tax on gifts	23,012,000	22,526,000	22,658,500
Total	256,116,500	266,416,500	285,618,000

In view of the need for increased revenues, in the budget for 1907 the Minister of Finance, M. Poincaré, proposed to increase by 30 per cent the tax on all inheritances of more than 10,000 francs and on gifts *inter vivos,* and then to add a *décime* to these increased duties, making the total increase about 43 per cent. He also proposed to extend the application of the progressive principle by including in the schedule of rates three additional categories for inheritances above 50,000,000 francs, making the excess above 100,000,000 francs pay more than the part between 50,-000,000 and 100,000,000 francs, and the excess above 250,-

[1] Loi du 16 avril 1895, arts. 3 and 4; loi du 29 déc. 1884, art. 9.

000,000 francs pay at a still higher rate. This would have made the maximum rate for direct heirs, including the proposed *décime*, 8.8 per cent, and for distant relatives and strangers, 31.35 per cent.[1] The budget speech was received with much applause in the Chamber of Deputies, but the heavy taxes proposed naturally provoked severe criticism,[2] and they were rejected by the Budget Committee.

[1] *Bulletin de statistique et de législation comparée*, July, 1906, pp. 22-77. The rates appearing in the bill do not in all cases show an increase of exactly 30 per cent. The maxima given above are based upon the bill rather than upon the budget speech. The Minister of Finance stated that by limiting the increase to amounts exceeding 10,000 francs only six per cent of all heirs would be affected by the increase, which was estimated to be sufficient without the proposed *décime* to add 60,-830,000 francs to the annual receipts. The corresponding increase in the tax on gifts was estimated to produce 6,797,000 francs.

[2] Especially by Leroy-Beaulieu in the *Economiste Français* and in the *Revue des Deux Mondes* for August 15, 1906; though curiously enough he overlooked or ignored part of the proposed increase.

CHAPTER III

GERMANY

I. State Inheritance Taxes

The inheritance tax made its appearance in various parts of Germany during the seventeenth century—in the city of Hamburg and the principality of Brunswick-Lüneburg as early as 1624. Brunswick-Lüneburg levied the fiftieth penny of collateral inheritances "for the increase of the public treasure." Doubt seems to have arisen whether this exaction applied to legacies, but finally they were included; and when difficulty was experienced in enforcing the tax, provision was made for paying an information fee to those reporting to the authorities deaths of which the latter were ignorant. Hamburg imposed a ten per cent tax on heirs more remote than the decedent's nephews and nieces. Property which went out of the city to reach the heirs for whom it was intended had paid such a tax ever since 1529, and in order to restore this ancient discrimination the tax on local heirs was reduced in 1735 to five per cent. Baden-Durlach limited intestate inheritance to ten degrees of relationship, and required heirs beyond the seventh degree to pay a tax of ten per cent. In Brandenburg Frederick William introduced a stamp tax on testaments, etc., while in the city of Rostock a two per cent tax on collateral heirs, established in 1669, has continued in force to the present day, in addition to the state inheritance tax levied by Mecklenburg-Schwerin. During the eighteenth century inheritance taxes were introduced in sev-

eral of the Thuringian states for the support of orphan asylums and houses of correction.[1]

Prior to the adoption in 1906 of an Imperial inheritance tax, all of the German states except the principality of Waldeck levied separate inheritance taxes for state purposes. The rates are shown in the table[2] on the following page. Direct descendants were exempt except in Alsace-Lorraine and, in recent years, in Hamburg, Bremen, and Lübeck; but parents and grandparents were taxed in nearly half the states. Where direct descendants were taxed at all, they were favored with larger exemptions as well as lower rates than other relatives, and the most recent laws were especially favorable to minor children. Thus, Lübeck taxed minor or dependent children and the widow of the decedent only if the inheritance exceeded eight thousand marks, though other direct heirs were taxed when the amount exceeded four thousand marks. Bremen made a still more elaborate distinction, the general exemption of three thousand marks for descendants being increased by five hundred marks for each year the heir lacked of being twenty-one years of age, with a maximum exemption of ten thousand marks for young children and for those unable to earn a livelihood. As in some of the other states, the surviving husband or wife was wholly exempt if there were children, but otherwise was taxed if the amount exceeded five thousand marks. In calculating the value of direct inheritances, where they were taxed, no account was taken of house furnishings, clothing, etc. Domestic servants were very commonly favored with generous exemptions and lower rates, at least on life annuities or pensions.

[1] Schanz in *Finanz-Archiv*, 17: 54-61, 69-77.

[2] Compiled from the tables given by Schanz in *Finanz-Archiv*, 18: 679-695, and from the more recent statutes of Anhalt, Bremen, Hamburg, Lübeck, Reuss (younger line), Saxe-Coburg, and Saxe-Gotha.

RATES OF GERMAN INHERITANCE TAXES IN FORCE JANUARY 1, 1906.

	Alsace-Lorraine.	Anhalt.	Baden.	Bavaria.	Bremen.	Brunswick.	Hamburg.	Hesse.	Lippe.	Lübeck.
	%	%	%	%	%	%	%	%	%	%
Husband or wife	[1]3	......	....	..	[2]2–3	....	......	..	..	[2]2–4
Children	1	......	....	..	2–3	....	2–4	..	..	2–4
Other descendants	1	......	....	..	2–3	....	4–8	..	..	4–8
Adopted children	1	4–6	[3]	..	[4]5–7½	2½	6–12	5	3	6–12
Step-children	9	6–9	6	4	5–7½	2½	4–8	8	3	6–12
Parents	1	.....	1	[5]4	5–7½	....	6–12	[6]5	..	6–12
Grandparents, etc.	1	......	1–2	[5]6	5–7½	....	6–12	5	..	6–12
Step-parents	9	6–9	6	4	......	2½	......	8	6	6–12
Children-in-law	9	6–9	6	4	5–7½	2½	4–8	8	3	6–12
Brothers and sisters	6.5	4–6	3–4	4	5–7½	2½	6–12	[4]5	3	6–12
Nephews and nieces	6.5	4–6	3–4	6	5–7½	2½	8–16	5	3	8–16
Uncles and aunts	6.5	6–9	6	6	10–15	5	8–16	8	6	8–16
Grandnephews, grandnieces	7	4–6	3–4	6	10–15	2½	10–20	8	6	10–20
Great-uncles, great-aunts	7	8–12	6	6	10–15	5	10–20	10	6	10–20
Cousins-german	7	8–12	6	6	10–15	5	10–20	10	6	10–20
Great-grandnephews and -nieces	8	10–15	3–4	8	10–15	2½	10–20	10	6	10–20
Great-great-uncles and -aunts	8	10–15	10	8	10–15	5	10–20	10	6	10–20
Relatives of the sixth degree	8	10–15	10	8	10–15	5	10–20	10	10	10–20
More distant relatives and strangers	9	10–15	10	8	10–15	5	10–20	10	10	10–20

	Mecklenburg-Schwerin.	Oldenburg.	Prussia.	Reuss (elder line).	Reuss (younger line).	Saxe-Altenburg.	Saxe-Coburg.	Saxe-Gotha.	Saxe-Meiningen.	Saxe-Weimar.	Saxony.	Schaumburg-Lippe.	Schwarzburg-Rudolstadt.	Schwarzburg-Sondershausen.	Würtemberg.
	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Husband or wife	....	..	..	[2]3	......	..	..	..	..	..	..	..	....	....	..
Children	....	..	..	..	......	..	..	..	..	..	..	..	....	....	..
Other descendants	....	..	..	.	......	..	..	..	..	..	..	..	....	....	..
Adopted children	1	4	2	3	4–6	6	5	5	..	4	..	2	2	5	3
Step-children	2	4	4	6	8–12	6	6	8	6	6	3	4	8	5	3
Parents	....		..	..	2–3	[6]	..	[7]2	..	..	..	..	....	....	2
Grandparents, etc.	....	..	..	..	3–4½	4	..	[7]2	..	.	..	..	....	....	3
Step-parents	4	7	4	6	8–12	6	6	8	6	6	4	4	8	5	4
Children-in-law	3	4	4	6	8–12	6	6	8	6	6	3	4	8	5	3
Brothers and sisters	1	4	2	3	4–6	4	5	5	4	4	2	4	2	4	2
Nephews and nieces	2	4	2	3	6–9	4	6	6	4	4	3	4	4	5	3
Uncles and aunts	3	7	4	6	8–12	5	6	8	6	6	4	4	8	5	4
Grandnephews, grandnieces	3	7	2	6	8–12	4	6	8	4	4	4	4	8	5	4
Great-uncles, great-aunts	6	7	4	6	8–12	5	6	8	6	6	8	4	8	8	6
Cousins-german	3	7	4	6	8–12	5	6	8	6	6	6	4	8	8	6
Great-grandnephews and -nieces	6	7	2	6	8–12	4	8	10	4	4	8	4	8	5	8
Great-great-uncles and -aunts	6	7	4	6	8–12	5	8	10	9	6	8	4	8	8	8
Relatives of the sixth degree	6	10	4	6	8–12	5	8	10	9	6	8	4	8	8	8
More distant relatives and strangers	8	10	8	8	10–15	[8]6	8	10	9	8	8	8	8	8	8

[1] Only 1 per cent. if offspring also inherit. [2] Exempt if with issue. [3] Not exempt if children are excluded.
[4] Unless children are excluded. [5] Exempt on 1000 M. and on 20 per cent. of the excess. [6] Exempt on the intestate portion.
[7] Exempt on the compulsory share (one-half the intestate portion). [8] Relatives, 5 per cent on the intestate portion.

Progressive rates are a recent development in Germany. Schaumburg-Lippe had a slightly progressive collateral-inheritance tax as early as 1811, but the maximum rate was only three per cent, and the progressive feature was omitted from the law of 1880. The recent progressive movement began in a small way in Baden in 1899, grandparents being taxed two per cent instead of one when the amount exceeded five thousand marks, and certain collateral relatives four per cent instead of three on amounts over three thousand marks. More complete applications of the progressive principle were made by Hamburg and Lübeck in 1903, by Bremen in 1904, and by Anhalt and Reuss (younger line) in 1905, the rate on all inheritances of more than fifty thousand marks being subjected to additions of five or ten per cent for each fifty thousand or one hundred thousand marks, up to a maximum of one and one-half or two times the basic rate.

In most of the states gifts *inter vivos* were taxed like inheritances, but in some cases they were taxable only when made in contemplation of death, or when formally authenticated.

Bavaria has the beginning of a tax on corporations as a substitute for the inheritance tax; the real estate of juristic persons, except charitable and religious institutions, is subject to a tax of one per cent once in twenty years.

II. Germany—The Imperial Law of 1906

An inheritance tax for the Empire has been discussed for many years, but was not deemed wholly appropriate until after the adoption of the civil code establishing a uniform law of inheritance throughout Germany. The law of June 3d, 1906,[1] imposes an imperial inheritance tax at the following basic rates:

[1] Reichsgesetzblatt, 1906, Nr. 31.

	Per cent.
Parents, brothers and sisters and their children	4
Grand-parents and more distant ancestors, parents-in-law and step-parents, children-in-law and step-children, grand-nephews and grand-nieces, illegitimate children acknowledged by the fathers and their offspring, adopted children and their offspring	6
Brothers and sisters of parents, and relatives by marriage in the second degree in collateral lines	8
In other cases	10

The tax is progressive, the rates given above being increased in the case of inheritances over 20,000 marks by one-tenth for each further sum at first of 20,000 or 25,000 marks and afterward of 50,000 or 100,000 marks. For amounts over one million marks the tax is levied at two and one-half times the basic rates, making the maximum rate twenty-five per cent. In the case of the immediate relatives subject to the four per cent rate, the progression applies only when the value of the inheritance is more than 50,000 marks. On large amounts the German tax is considerably heavier than the French, because the progressive rates apply to the entire amount of the inheritance, not merely to their respective fractions; but when an inheritance is valued at a sum slightly in excess of that to which a lower rate applies the higher rate will be collected only in so far as it can be paid out of half the amount by which the inheritance exceeds the preceding class limit.

It will be observed that children and other direct descendants are exempt, as they were in most of the German states. All inheritances of less than five hundred marks are exempt, and the exemption is increased to ten thousand marks for parents, grandparents, and adopted children, and to three thousand marks for employees of the deceased. Objects given by parents, grandparents, etc., to their offspring are not taxable when reverting by inheritance to the donors; and house furnishings, clothing, etc., passing to certain

near relatives are exempt to the value of five thousand marks.

Land and buildings used continuously in agriculture or forestry are favored with a reduction of one-fourth from the rate applicable to other property, and the valuation of such property is based wholly upon the profits derived from it, the value being taken as twenty-five times the net proceeds which the property can yield with ordinary cultivation in the manner in which it has been previously conducted. Bequests to German churches, trust funds, societies, and institutions exclusively religious or charitable or for the public good, and those made to funds or institutions for the support of employees of the deceased and their families, are taxed only five per cent, with an exemption of five thousand marks in favor of churches.

Debts of the deceased, the expenses of burial, including the cost of the tombstone, and the expenses of administration of the estate, are deducted. Exemption is accorded to the nearest relatives in the direct line when the real property has been subject to inheritance tax within five years, and if the last inheritance tax was between five and ten years previous an abatement of fifty per cent is allowed.

The tax applies to gifts *inter vivos* at the same rates as to inheritances; and in order that the higher rates may not be evaded by dividing large gifts into numerous small ones, it is provided that such separate grants, made within five years to the same person, may be treated as one grant. Gifts to needy individuals to provide for their living expenses or their education or the cancelation of demands upon them are exempt, as also are gifts of articles of personal use not exceeding three thousand marks in value to near relatives of the donor.

The value of life estates and annuities is calculated for persons not over twenty-five years of age at twenty times the annual value. The multiplier is diminished by two

for every additional ten years of age up to sixty-five years and for every five years thereafter, individuals above eighty years of age paying four times the annual value.

Following the practice of the separate states, the German Empire levies its inheritance tax on all real estate within its borders, without regard to the residence of the decedent, and on the personal property of German decedents, and on personal property in Germany passing to heirs domiciled there in so far as in the country of the decedent the property of German decedents is taxed under similar circumstances; but any inheritance tax paid in a foreign country on personal property will be deducted from the tax payable in Germany.

Two-thirds of the proceeds of this tax will go to the Empire, and one-third is to be retained by the states in which it is collected. Until the close of the fiscal year 1910, however, each state is to receive at least the amount of its average revenue from inheritance taxes corresponding to the Imperial tax during the years 1901-1905. The states still have the option of taxing direct inheritances, which are left untaxed by the Imperial law, and also of imposing additional taxes upon collateral heirs; but the Imperial rates are in general so much higher than any to which the German states are accustomed that they are not likely to avail themselves of the privilege, excepting perhaps the few states which had inaugurated the taxation of direct heirs. On the average, the states will be nearly as well off in any case under the Imperial law as when they imposed their own inheritance taxes; for the new law is expected to produce nearly three times as much revenue as the separate state laws. In 1904 the states of Germany collected inheritance taxes to the amount of 26,930,000 marks; the Imperial tax is expected to yield 72,000,000 marks a year, of which 48,000,000 marks will ultimately go to the central government, leaving the states 24,000,000 marks.

CHAPTER IV

SWITZERLAND

I. Historical Development and Rates in Force

As long ago as 1680 Geneva imposed a legacy tax on persons not heirs by the intestate law; and in Glarus the communes, or many of them, had a *Todesfallsteuer* or death tax for the benefit of their churches or schools long before the canton itself imposed an inheritance tax. Elsewhere in Switzerland the inheritance taxes are of comparatively modern origin. The Helvetic Republic, by a law of 1798, established a national tax on collateral inheritances and gifts as a part of its system of transfer taxes. The tax was graduated from one-half of one per cent for brothers and sisters to five per cent for distant relative and strangers. A law of 1800 increased the maximum to six per cent. When Switzerland was again divided into separate states, a number of them retained this tax in a modified form, while others abandoned it. The nineteenth century witnessed many changes in the laws of the various cantons, tending for the most part to the further development of the tax. The annual product of the inheritance and gift taxes for the whole of Switzerland increased in the forty years from 1856 to 1896 from 521,000 to 4,359,000 francs, an increase due largely to the enactment of new tax laws and the more extended application of old ones.[1]

[1] Schanz, *Die Steuern der Schweiz;* de Cérenville, *Les impôts en Suisse*, pp. 212-218; Krüger, *Die Erbschaftssteuer*, p. 16.

The Swiss cantons were pioneers in the introduction of progressive inheritance taxes. Geneva imposed such a tax as long ago as 1794, but this was discontinued after a two years' trial. Solothurn and Thurgau adopted progressive rates about the middle of the nineteenth century, and Zürich followed their example in 1869. Inheritances are taxed to a greater or less extent in nearly all the cantons, and in ten cases the rates are now progressive. Direct descendants are exempt except in Geneva and a few of the smaller cantons. The maximum rate varies from ten per cent in several cases to twenty per cent in Aargau, Neuchatel and Schaffhausen, twenty-four per cent in Solothurn, twenty-five per cent in Basel-Land and thirty per cent in St. Gall while the little canton of Uri discriminates against intestacy with even higher rates. The following table shows the rates in force in the different cantons:

RATES OF THE SWISS INHERITANCE TAXES.

	Husband or wife.	Children.	Parents.	Grandchildren.	Grandparents.	Brothers, sisters.	Uncles, aunts.	Nephews, nieces.	Cousins-german.	Strangers in blood.
	%	%	%	%	%	%	%	%	%	%
Appenzell (outer Rhodes)	......	......	2	......	4	2	4	2	4	10
Aargau	......	......	......	......	......	1	3	3	6	20
Basel Town	1	1	2	2	4	4	6	6	9	12
Basel-Land	......	......	......	......	......	2–5	4–10	4–10	6–15	10–25
Bern	1–1.5	......	1–1.5	......	2–3	2–3	4–6	4–6	6–9	10–15
Freiburg	2	......	......	......	......	2	3	3	4	10
Geneva	[1]2	2	2	2	2	5	5	5	10	15
Glarus	0.5–1.5	0.5–1.5	1–2	1–2	1–2	2–3	4–5	4–5	6–7	10–11
Lucerne	......	......	......	......	[2]4	......	[2]4	2	[2]4	12
Neuchatel	3	......	......	......	......	4	5	5	6	20
St. Gall	0.5–1.5	0.5–1.5	0.5–1.5	0.5–1.5	3–9	2–6	4–12	4–12	6–18	10–30
Schaffhausen	......	......	......	......	......	2–4	4–8	4–8	6–12	10–20
Solothurn	1.5–6	......	.75–3	......	1.5–6	1.5–6	4.5–18	4.5–18	5¼–21	6–24
Ticino	3	......	......	......	......	3	4	4	5	10
Thurgau	[3]1–4	......	......	......	1–4	1–4	2–8	1.5–6	2.5–10	3–12
Uri	2–6	......	......	......	......	1–3	1.5–4.5	1.5–4.5	3–9	25–75
Vaud	4	......	2	......	2	4	5	5	6	10
Zug	0.5–2.5	......	......	......	......	0.5–2.5	1–3	1–3	2–4	8–10
Zürich	......	......	......	......	8–12	2–3	6–9	10–15	10–15	10–15

[1] Five per cent if there are no children.
[2] Eight per cent if the heir belongs to the maternal branch.
[3] Two and a half to ten per cent if without issue.

In several cantons the proceeds are set aside in whole or in part for educational and charitable purposes. Deduction for debts, at least within certain limits, is allowed everywhere except in Zürich. In most cases the inheritance tax is accompanied by a tax on gifts *inter vivos*; and some cantons improve the opportunity afforded by the settlement of estates to collect back taxes in cases where fraud is discovered.

II. Cantons Having Progressive Taxes

In *Solothurn*, where the progressive principle was introduced in 1848, the basic rates of three to twelve per cent apply only to amounts between one hundred and five thousand francs. Inheritances of less than one hundred francs are taxed at one-half these rates. On the other hand, the rates are increased by one-fourth for each additional five thousand francs, so that an inheritance of 20,000 francs pays double the regular percentage; the progression ceases at this point. Charitable and educational institutions and churches are not entirely exempt, but pay only one per cent.

In *Thurgau* the progressive scale is the same as in Solothurn, except that the increase is a little less rapid; amounts less than 212 francs pay only one-half of the nominal rate, and the maximum rates apply to amounts of 25,000 francs or more.

Zürich provides for progression on similar principles, but in a less marked degree. The rate is increased by one-tenth for each 10,000 francs until it becomes five-tenths higher than the original rate.

Bern has adopted the principle of progression only to a slight extent; on any excess above 50,000 francs the rate is increased one-half. Direct descendants, public institutions, and certain private institutions are exempt; so also is the surviving husband or wife in case there are children.

The inheritance of a childless husband or wife is taxed only when it exceeds 5,000 francs; that of any other taxable person, when it exceeds 1,000 francs. One-tenth of the produce of the tax goes to the commune in which the decedent lived, for school purposes.

In *Schaffhausen* the rates are increased one-tenth for amounts between 2,000 and 10,000 francs, and there is a further increase of one-tenth for every additional 10,000 francs up to 90,000, all successions above that amount paying double the schedule rate. The first 200 francs in each share are left out of the reckoning. Bequests for public purposes are exempt, as are also bequests to servants of a year's standing if not in excess of 1,000 francs. Half the receipts are set aside each year for special funds of the canton; in 1889, for example, this part went to the poor fund.

Uri discriminates against intestacy by taxing the intestate successions of distant relatives more heavily than bequests, even to strangers in blood. The intestate rates for collateral relatives increase from one per cent for brothers and sisters to twenty-five per cent for distant relatives; but the maximum rate for bequests is five per cent. These rates are increased one-tenth for each 10,000 francs, up to 200,000 francs. Hence in the case of a large amount acquired by intestate succession, the twenty-five per cent rate for distant relatives would grow to seventy-five per cent. This is the highest rate to be found in any country; but practically it is of very little importance, because well-to-do persons without near relatives are not likely to die intestate. As a matter of fact, de Cérenville states that the maximum rate has never been imposed; he calls it an "exorbitant pretension." In Uri one-third of the proceeds of the tax goes to the communes for the support of schools and the poor.

Basel Land increases its rates by tenths, up to a maximum

of two and a half times the nominal rate for amounts over 400,000 francs.

In *St. Gall* the rates are increased one per cent for each thousand francs, up to three times the basic rates. Servants of the deceased are exempt up to two thousand francs, and direct heirs up to ten thousand francs.

In *Glarus* and *Zug* the rates increase by arithmetical progression. In Glarus, for example, the second 10,000 francs of an inheritance is taxed 2.1 per cent if the heir is a brother of the deceased and 10.1 per cent if there is no relationship. The additions never exceed one per cent of the inheritance. In Zug the maximum addition is two per cent of the inheritance; that is, a one per cent rate may be increased to three per cent, and an eight per cent rate to ten per cent.

III. Other Cantons

The *Freiburg* law of 1882 contains some curious provisions. The usual effect of the existence or non-existence of children upon the tax paid by the surviving parent is in this case reversed; the husband or wife pays eight per cent in case the deceased leaves legitimate children, brothers, sisters, nephews, nieces, grandnephews, or grandnieces, otherwise only two per cent; apparently on the principle that the surviving spouse takes what rightfully belong to the children or collateral relatives. The same principle is carried out in taxing illegitimate children two per cent if there are also legitimate children, and exempting them in other cases. If one collateral relative receives by will more than his equal share, he pays an additional one per cent. The rate for servants is four per cent, the rate paid also by cousins. Bequests to persons who are on the poor-list are exempt. Certain public institutions, which formerly paid two per cent, were relieved of the tax by an amendment of the law in 1886.

For a number of years Freiburg had a progressive tax, but this was discontinued in 1862, when the tax on successions and gifts was consolidated with the registration taxes. The average annual yield of the tax is about 78,000 francs, or two-thirds of a franc for each inhabitant.

Geneva, with its two per cent tax on direct heirs, derives more revenue from its inheritance tax, in proportion to population, than any other canton; the average yield is about ten francs per inhabitant. Direct inheritances of three thousand francs and others of fifty francs or less are exempt, as well as bequests to public and charitable institutions.

Basel Town amended its law in 1887 so as to tax direct heirs, who were formerly exempt; it still exempts bequests for public and benevolent purposes, bequests to persons in the employ of the deceased, inheritances of direct descendants not exceeding two thousand francs, and those of other persons not exceeding four hundred francs.

The law of *Lucerne* has a curious provision taxing maternal grandparents, uncles, and cousins at double the rate applying to the corresponding relatives on the paternal side —eight per cent instead of four. In general, amounts of 300 francs or less are exempt; when the beneficiary has been a servant of the deceased for a year or more, the exemption is doubled. All bequests to charitable, educational and other public institutions are exempt. Half the proceeds are used for school purposes.

Neuchâtel exempts educational, benevolent, and charitable institutions recognized by the state; the husband or wife, if there are children; bequests to servants of the deceased, up to 1,000 francs; and other amounts less than 100 francs.

Grisons and *Nidwald,* which have no cantonal inheritance tax, give their communes power to levy such taxes. The only cantons having no inheritance tax for either general or

local purposes are Appenzel Inner Rhodes, Schwyz, Obwald, and Valais; and in Valais there are registration duties incidental to the settlement of estates.

The rule in Switzerland is that personal property is taxed in the canton where the decedent lived, and real estate where it is situated. Reciprocal agreements to prevent double taxation have been made with some foreign governments.

CHAPTER V

OTHER COUNTRIES

I. The Netherlands

The origin of many of the existing inheritance taxes may be traced to the Netherlands, where this form of taxation was introduced before the end of the sixteenth century. In 1591 Utrecht imposed a tax of two and a half per cent on transfers of landed property, including successions going to collateral relatives, but not those of direct heirs. A similar tax was introduced in Holland in 1598, and the following year Zealand imposed a collateral-inheritance tax on movable property at the same rate. During the seventeenth century the rates were increased from time to time, were extended (at least in Holland) to movable property, and were to some extent differentiated according to the degree of relationship between the decedent and the heir; and the remaining Dutch provinces imposed similar taxes, in some cases mulcting foreign heirs twice as heavily as their own citizens. Adam Smith described " the Dutch tax upon successions " of his day as ranging, according to the degree of collateral relationship, from five to thirty per cent of the value of the property, successions between husband and wife being taxed only the fiftieth penny, or two per cent. There was also a stamp tax on wills, varying according to the value of the property involved from three stivers to 300 florins.[1]

[1] *Wealth of Nations*, bk. v, chap. ii, pt. ii, appendix to articles 1 and 2.

In 1805 the Batavian Republic imposed a collateral-inheritance tax ranging from five to ten per cent according to relationship, the maximum rate applying to bequests and legacies in excess of an heir's intestate portion. Amounts of less than 300 florins were exempt.[1]

The vicissitudes of Dutch history have resulted in many changes in fiscal legislation which it is unnecessary to follow. The succession-tax law now in force prescribes the following rates:

	Per cent.
Direct descendants, and husband or wife with living issue.....	1
Direct ancestors..	3
Brothers and sisters, and husband or wife without issue.......	4
Uncles and aunts, nephews and nieces, great-uncles and great-aunts, grand-nephews and grand-nieces......................	6
Other persons, corporations, and all collateral relatives on the excess above the intestate portion.........................	10

The debts and funeral expenses of the deceased are deducted. Successions of 300 florins or less are exempt; and in the case of direct descendants, or a husband or wife with living offspring, successions of 1000 florins are exempt and 500 florins are deducted from amounts between 1000 and 1500 florins.

The tax just described is that which applies when the decedent was a resident of the Netherlands; on real estate left by foreign decedents the rate is six per cent.

In the case of stocks or interest-bearing securities an additional transfer tax must be paid, without deduction for debts, at the rate of one-fourth of one per cent for direct heirs and two per cent in other cases.

To the nominal rates of the succession and transfer taxes

[1] Schanz, "Studien zur Geschichte und Theorie der Erbschaftssteuer," *Finanz-Archiv*, 18: 55-62, 130-132.

shown above the annual finance act adds a certain percentage, which for many years has been 38 per cent.

II. Austria-Hungary

A ten per cent collateral-inheritance tax was introduced in *Austria* in 1759, for the purpose of paying the public debt resulting from the Seven Years' War. The tax was repeatedly modified during the first century of its existence. The present law, which has been in force since 1850, taxes all successions and gifts; the rate for landed property is in every case one and one-half per cent more than for movables, as shown below:

	Movables. Per cent.	*Immovables.* Per cent.
Direct line, husband or wife	1	2½
Servants, on bequests not exceeding 500 guilders	1	2½
Collateral relatives not more distant than cousins	4	5½
All other persons	8	9½

These nominal rates, however, are increased by one-fourth. Sons-in-law, daughters-in-law, step-children, and adopted children are regarded as direct heirs. Debts are deducted as far as possible from the value of the movables, which are subject to the lower rates.

Besides the above state tax, there are light inheritance taxes for the school funds, poor funds, etc., in the various provinces. In Lower Austria the school tax is progressive, beginning at one-fourth of one per cent for amounts under one thousand florins, and is also increased by one-half when the decedent leaves no widow nor heirs at law. In the city of Vienna there is also a progressive inheritance tax for the hospital fund, besides a light transfer tax applying to real esate only;[1] and certain other municipalities

[1] *Journal of the Society of Comparative Legislation,* 5: 26.

also levy inheritance taxes in aid of hospitals and poor funds.

In *Hungary* the rates of the succession tax are as follows:

	Movables. Per cent.	*Immovables.* Per cent.
Direct line	1	2.5
Husband or wife, step-children, adopted children, illegitimate children and their descendants	1.3	3.2
Other relatives	5	6.9

Austria has a well-developed system of mortmain taxes in lieu of the inheritance tax, levied once in ten years on all corporate property. For joint-stock companies the rate is one and one-half per cent; for corporations in which the members hold no shares, such as churches, charitable institutions, and communes, the rate is three per cent. Associations which are to continue not longer than fifteen years, or only during the lives of the incorporators, are not subject to the tax. When there is doubt as to the value of the property, the average income of the corporation for the ten years is taken as the basis of capitalization and multiplied by twenty; so that the tax of one and one-half per cent of the property paid once in ten years is equal to an annual income tax of three per cent.

III. Italy

The political unification of Italy substituted a single inheritance tax for those which had been imposed by the separate states. During the next few decades the rates were several times increased, and in 1902 the progressive principle was introduced by means of the following elaborate schedule:

	301 to 1,000 lire.	1,001 to 50,000 lire.	50,001 to 100,000 lire.	100,001 to 250,000 lire.	250,001 to 500,000 lire.	500,001 to 1,000,000 lire.	Beyond 1,000,000 lire.
	%	%	%	%	%	%	%
Direct line	0.80	1.60	2.00	2.40	2.80	3.20	3.60
Husband or wife..	3.00	4.50	5.00	5.40	5.80	6.20	6.60
	Up to 50,000 lire:						
Brothers and sisters		7.00	7.50	8.00	8.50	9.25	10.00
Uncles and nephews.....		8.50	9.25	10.00	11.00	12.00	13.00
Great-uncles and grand-nephews		10.00	10.80	11.60	12.60	13.80	15.00
Other relatives up to the sixth degree..........		12.50	13.50	14.50	15.70	16.80	18.00
Relatives beyond the sixth degree, and strangers..		15.00	16.30	17.60	19.00	20.50	22.00

The rates shown in the table apply only to their respective fractions of the inheritance. Amounts of 300 lire or less passing to direct heirs or to the surviving husband or wife are subject only to a nominal tax of one lira; but not even the immediate family is wholly exempt except when the net value of the estate falls below 100 lire. Bequests to charitable institutions are taxed at a proportional rate of five per cent.

The inheritance tax is supplemented by an annual mortmain tax on corporations, amounting to six-tenths of one per cent in the case of charitable institutions under state inspection, and four and eight-tenths per cent in all other cases.

The inheritance tax amounted in 1904-5 to 39,483,350 lire; the mortmain tax to 5,708,836 lire.

IV. Russia

The Russian government followed the example of the other European countries by introducing a tax on inheritances and gifts in 1882.[1] The rates were increased one-half in 1905, and are now as follows:

	Per cent.
Husband or wife, direct descendants and ancestors, adopted children, sons-in-law and daughters-in-law	1½
Step-children, and brothers and sisters and their orphan children.	6
Other relatives of the third and fourth degrees	9
Other persons	12

No tax is required on amounts of 1,000 rubles or less, on bequests to benevolent, religious, or educational institutions, on the peasant allotments, on peasants' movables from which no income is derived, or on the rural estates of the noble class when passing to direct heirs. A usufructuary pays the tax on one-half the value of the property. Declarations stating the value of the property transferred are required to be made by the heirs or executors, and may be reviewed by the courts. Deductions are made for debts and funeral expenses. If the tax is not paid within one month after the amount due is ascertained, a penalty of one per cent per month is added; but by applying for an extension of time and paying six per cent interest, the heir may postpone the payment of the tax on movables for one year, and pay the tax on landed property in three annual instalments. The tax applies to all property situated in Russia, except when the decedent is a subject of a foreign state which does not tax the property of Russian subjects in like cases. Although the tax is made applicable to all gratuitous transfers of which there is documentary evidence, it has sometimes

[1] *Finanz-Archiv*, v, 1096; Krüger, *Die Erbschaftssteuer*, p. 30.

been evaded by death-bed gifts.[1] Before the recent increase in rates the proceeds were about 4,000,000 rubles a year.

A project for a progressive inheritance tax has recently been elaborated and brought forward by the Minister of Finance.

V. Scandinavian Countries

A collateral-inheritance tax was imposed in *Denmark* in 1792, for the purpose of reducing the public debt. The preamble of the law set forth that this was the least burdensome of taxes, because paid out of new acquisitions of property received accidentally and often unexpectedly. The rate was four per cent. In 1810 this tax was supplemented by another of one-half of one per cent, payable by all heirs, direct and collateral. The amendment and consolidation of these two laws has resulted in the following rates:

	Per cent.
Direct heirs, husband or wife	1
Brothers and sisters and their children	4
More distant relatives and strangers	7

Where an estate is wound up by a probate court or an executor there are also fees to be paid in proportion to the amount of the property.

In *Norway*, by the law of 1895, direct heirs and the surviving husband or wife are exempt from inheritance tax. Step-children and brothers and sisters and their children pay six per cent, and distant collateral relatives eight per cent. The exemption of small amounts is made conditional upon the general economic position of the heir, extending only to those whose entire property, including the inheritance, amounts to less than four hundred *kroner*.

[1] Mr. Maurice Jacobson, formerly a student in Russia, tells me of a case in which a Russian millionaire evaded the tax by giving away his property to his sons a few hours before his death.

The *Swedish* Stamp-Tax Act of 1899 imposes an inheritance tax at progressive rates, although the maximum is only six per cent. The minimum rate for relatives of every degree is one-half of one per cent; but for the surviving spouse and direct descendants the maximum is only one and one-half per cent, and amounts less than 400 *kroner* are exempt; while the maximum for parents and brothers and sisters and their descendants is three per cent, and for more distant relatives six per cent, only amounts less than 200 *kroner* being exempt. The more remote the relationship, also, the less the amount required to subject a succession to the maximum rate.[1]

In the case of real estate passing by will, there is an additional registration tax of six-tenths of one per cent. Most of the towns in Sweden levy probate duties of one per cent or less for the support of the magistrates and other public institutions.

VI. Other European Countries

Belgium has a rather complicated schedule of inheritance taxes. As in the Netherlands, there is one scale for the property of Belgian decedents and another for real estate in Belgium inherited from foreign heirs. In the former case the rates are as follows:

	Per cent.
Direct line, on real estate only	1.4
Husband or wife	5.5
Brothers and sisters	6.8
Uncles and aunts, nephews and nieces	8.2
Others, and all collateral relatives on any excess above the intestate portion	13.8

In the case of real estate inherited from foreign decedents

[1] These complex schedules are reproduced in the *Journal of the Society of Comparative Legislation*, 5: 42, 43.

direct heirs pay 1.4 per cent, and all others 6.8 per cent. A usufruct is calculated at one-half the value of the property.

In *Luxemburg* the inheritance tax rises to ten per cent; and as in the Low Countries nearby, in the case of bequests to collateral relatives any excess over the intestate portion is taxed at the maximum rate. Usufructuaries pay one-half the regular rates.

The *Spanish* inheritance tax of 1900 ranges from 1.4 per cent for direct heirs and 5.6 per cent for nephews to 12.6 per cent for collateral relatives beyond the sixth degree.

Portugal has an inheritance tax ranging nominally from five to fifteen per cent; but with the addition of a supplementary tax of five per cent, levied since 1898, and a stamp duty of two per cent, the actual rates are as follows:

	Per cent.
Parents and grandparents	5.355
Husband or wife	8.032
Brothers and sisters	10.710
Distant relatives and strangers	16.065

By reason of certain peculiarities of valuation the tax is really heavier in many cases than the above rates would indicate. *Foros*, a very common form of perpetual ground rents usually payable in kind, must be valued at not less than twenty years' purchase, although their market value is usually less. *Foros* dating from before 1867 generally have a clause providing that when the tenant's right is sold the ground landlord shall receive from two and one-half to ten per cent of the purchase price, and the estimated amount of one such *laudemio* is included in the valuation of the *foro* for the inheritance tax. These provisions, together with high assessments, are said to double the tax in some cases.[1]

[1] *Journal of the Society of Comparative Legislation*, 5: 39.

Greece has an inheritance tax of two per cent for brothers and sisters, three per cent for nephews and nieces, and five per cent for more distant relatives and strangers in blood, including adopted children. Small amounts are exempt.

Roumania, by a law of 1886, taxed collateral relatives from three to nine per cent, exempting the husband or wife and direct heirs, as well as legacies and gifts to certain public institutions. In 1900, as one of the results of the financial crisis of the previous year, the tax was extended to heirs of every class and the rates (on real estate) were fixed as follows:

	Per cent.
Lineal descendants	1
Husband or wife, lineal ancestors	3
Brothers and sisters, and their descendants	4
Collateral relatives up to the fourth degree	6
Collateral relatives from the fourth to the twelfth degree	9.2
Strangers in blood	12
Charitable institutions	2

In the case of movable property, which is not reached by any other part of the Roumanian tax system, the inheritance tax is three per cent higher than on realty.[1]

Bulgaria has an inheritance tax ranging from one-half of one per cent for direct heirs to ten per cent for those beyond the sixth degree of relationship.

In *Monaco* the rates for succession to landed property range from one to six per cent; for movables the rates are only one-half as high. Successions in the direct line are exempt only when not determined by will or deed. No provision is made for the deduction of debts.[2]

[1] Creanga, "Die Finanzpolitik Rumaniens in ihrer neuesten Gestaltung und die für die Sanierung der Finanzkrisis getroffenen Massnahmen," in *Finanz-Archiv*, 20: 1, 7.

[2] *Journal of the Royal Statistical Society*, 52: 137.

VII. Spanish America

Uruguay has had an inheritance tax since 1857, applying to collateral relatives and the surviving husband or wife, and discriminating against intestacy and against inheritances going out of the country. The rates where there is a will are from four to six per cent, and in cases of intestacy from six to ten per cent, according to relationship, with three per cent additional when property goes out of the country. Even direct inheritances passing out of the country are taxed, and the rate in this case is eleven per cent.

Chile. In order to avoid repeated payments of the inheritance tax resulting from frequent transfers of the same property, the Chilean law of 1878 provides that the tax shall be remitted in the case of property which during a period of ten years has changed hands twice through death, and on which the tax has been once paid. Amounts not exceeding 2,000 pesos in value are always exempt; and exemptions are also made in favor of the municipalities, free educational institutions, religious organizations, and institutions maintained or subsidized by the government. The rates vary from one per cent for direct descendants to eight per cent for strangers in blood. Portions reserved in favor of the surviving husband or wife are subject to a tax of one per cent; other successions between husband and wife are taxed three per cent.

Brazil. The law of 1898 imposes an inheritance tax of one-half of one per cent for the direct line, five and one-half per cent for the surviving spouse and the nearest collateral relatives, from eleven to sixteen and one-half per cent for more distant relatives, and twenty-two per cent for strangers in blood. Property passing to any member of a religious order pays sixteen and one-half per cent, whatever the degree of relationship. The same rate is ap-

plied to the surviving husband or wife in case of intestate succession.

Argentina has a collateral-inheritance tax of five and ten per cent, imposed by the public education act of 1884 for the benefit of the schools. There are also stamp duties incidental to the settlement of estates.

Guatemala. The Fiscal Code of 1881 provides for a tax on successions and gifts, to be levied at the following rates:

	Per cent.
Legitimate descendants	1
Lineal ancestors, and acknowledged natural children	2
Husband or wife, brothers and sisters, and adopted children	3
Other collateral relatives, and the adopted father	5
Relations by marriage	8
Strangers	10

Exemptions are made in favor of successions not exceeding 1,000 pesos, and bequests to municipalities and to institutions subsidized by the state.

Mexico. Each of the states of Mexico has its own inheritance tax, and in addition there is a national stamp tax of one per cent for direct heirs and the surviving spouse, two per cent for collateral heirs, and three per cent for very distant relatives and strangers.[1] There is also in the Federal District and in the Territories an inheritance tax levied at the following rates:[2]

	For the first 10,000 pesos. Per cent.	*Excess above 10,000 pesos.* Per cent.
Descendants, husband or wife	½	1
Ascendants	1	2
Relatives of the second to fourth degrees inclusive	3	4
Relatives of the fifth to eighth degrees inclusive	8	8
More distant relatives and strangers	12	12

[1] Law of April 25, 1893.

[2] Law of June 7, 1901.

VIII. Japan

In 1905 Japan adopted an inheritance tax which is not only progressive and graduated according to relationship, but is also somewhat higher for succession to individual property than for succession to the headship of a house. Amounts less than five hundred yen in the first case or 1,000 yen in the second case are exempt. The rates begin at 1.2 per cent, and increase gradually until for amounts between 70,000 and 100,000 yen they range from four to six and one-half per cent. Beyond that point the rate increases one-half of one per cent for each additional 50,000 yen, up to 1,000,000 yen, at which point the progression ceases. The tax is not imposed on successions which occur through death in battle, or through death resulting within one year from wounds received or sickness suffered in war. Gifts and legacies to public corporations and charitable enterprises are exempt.

CHAPTER VI

THE BRITISH EMPIRE

I. The United Kingdom

"There is no art which one government sooner learns of another," said Adam Smith, "than that of draining money from the pockets of the people." England having borrowed from Holland the idea of stamp taxes, the original Stamp Act of 1694[1] contained a provision for a uniform tax of five shillings on probates and letters of administration in the case of estates of more than twenty pounds. Four years later,[2] at the expiration of the term for which the stamp duties were originally granted, this tax was doubled; and in 1779[3] it was graduated from ten to fifty shillings, according to the value of the estate.

The publication of *The Wealth of Nations* had by this time made the Dutch inheritance taxes better known, and the result was an extension of that mode of taxation in England. In 1780[4] Lord North introduced a tax on receipts for legacies and distributive shares of personal property, graduated from two shillings six pence for amounts not exceeding twenty pounds to twenty shillings for amounts of one hundred pounds or more. A few years later[5] the rates

[1] 5 and 6 Will. and Mary, chap. 21.

[2] 9 and 10 Will. III, chap. 25.

[3] 19 Geo. III, chap. 66.

[4] 20 Geo. III, chap. 28.

[5] 23 Geo. III, chap. 58; 29 Geo. III, chap. 5.

were increased, and something approximating a proportional scale introduced; and discriminations were made in favor of the widow, children, and grandchildren. But this tax, naturally enough, was evaded by omitting to make use of receipts, until in 1796 [1] Pitt made it a tax on the transfer itself and made executors and administrators liable for its payment. The receipts were still stamped to show the payment of the duty, but the giving and taking of receipts was now made compulsory. At the same time the tax was graduated according to relationship from two per cent for brothers and sisters to six per cent for distant relatives. Pitt proposed a corresponding tax on succession to real estate; but this met with powerful opposition, and it was left for Gladstone to carry through the reform in 1853.[2]

The English tax on probates and letters of administration was extended to Scotland in 1804 under the name of *inventory duty.* A probate tax had also been imposed by the Irish parliament in 1774, but until 1842 it was lower in Ireland than in Great Britain; in that year all parts of the United Kingdom were placed on an equal footing.

The *account duty* was imposed in 1881 [3] merely to protect the probate duty from evasion by gifts *causâ mortis,* joint investments, etc. It was levied at the same rates as the probate duty on all gifts of personal property unless made in good faith twelve months before the death of the donor. The probate duty was now made slightly progressive, with a maximum rate of three pounds for every hundred pounds or fraction thereof.

The *estate duty,* as originally introduced by Mr. Goschen in 1889,[4] was an additional tax of one per cent on personal

[1] 36 Geo. III, chap. 52.

[2] 16 and 17 Vict., chap. 51.

[3] 44 Vict., chap. 12.

[4] 44 Vict., chap. 12.

estates exceeding ten thousand pounds, and on individual successions of realty exceeding ten thousand pounds in value; so that it enhanced the progressive effect of the probate duty. This completed the complicated system of taxes known collectively as the " death duties," a name said to have been given them by Gladstone.[1]

Besides being needlessly complicated, the system was full of anomalies and inequalities. The probate and account duties applied only to personal property; the succession duty on real estate had been increased [2] to rates nominally higher than those of the legacy duty, with a view to equalizing the burdens on real and personal property, but the exemptions from estate duty introduced a further inequality, and in the mode of valuation and the time allowed for payment real estate was always favored. While the duties on personalty were always paid in a lump sum and on the full capital value, those on realty were paid in instalments extending over several years, and on fictitious valuations calculated from the annual value. In the case of unproductive land held for speculative purposes there was absolutely no tax.[3]

In the Finance Act of 1894 [4] Sir Vernon Harcourt simplified the system of death duties, removed the more glaring anomalies, and greatly extended the application of the progressive principle. For the old probate, account, and estate duties he substituted a new estate duty graduated according to the size of the estate, real and personal, from one to eight per cent, as follows:

[1] Wilson, *The National Budget*, p. 117.

[2] 51 Vict., chap. 8, pt. iv.

[3] For a fuller statement of these anomalies see Buxton and Barnes' *Handbook to the Death Duties* (1890), part ii.

[4] 57 and 58 Vict., chap. 30.

When the principal value of the estate—

Exceeds	£100	and does not exceed	£300	30 shillings.
"	300	" "	500	50 "
"	500	" "	1,000	2 per cent.
"	1,000	" "	10,000	3 "
"	10,000	" "	25,000	4 "
"	25,000	" "	50,000	4½ "
"	50,000	" "	75,000	5 "
"	75,000	" "	100,000	5½ "
"	100,000	" "	150,000	6 "
"	150,000	" "	250,000	6½ "
"	250,000	" "	500,000	7 "
"	500,000	" "	1,000,000	7½ "
"	1,000,000			8 "

By the Finance Act of 1907 the estate duty on estates exceeding £150,000 was increased to the following scale:

When the principal value of the estate—

Exceeds	£150,000	and does not exceed	£250,000	7 per cent.	
"	250,000	" "	500,000	8 "	
"	500,000	" "	750,000	9 "	
"	750,000	" "	1,000,000	10 "	
"	1,000,000	" "	1,500,000	10 per cent on the first £1,000,000,	11 per cent On the remainder.
"	1,500,000	" "	2,000,000		12 per cent
"	2,000,000	" "	2,500,000		13 per cent
"	2,500,000	" "	3,000,000		14 per cent
"	3,000,000				15 per cent

In addition to this estate duty calculated on the value of the estate as a whole, collateral heirs still have to pay legacy duty on their legacies or distributive shares of personal property, and succession duty on the corresponding shares of real estate and on leaseholds, settled personalty, and legacies charged on land, which are not subject to legacy duty, according to the following consanguinity scale:

	Per cent.
Brothers and sisters and their descendants	3
Uncles and aunts and their descendants	5
Great-uncles and great-aunts and their descendants	6
Other persons	10

Thus the combined effect of the death duties is that any portion of an estate of more than £3,000,000 passing to a very distant relative or by will to a stranger in blood will pay about 23 per cent (legacy and succession duties being payable only on what remains after the estate duty is paid.)

In the case of a settlement there is an additional "settlement estate duty" of one per cent, compensating to some extent for the provision that estate duty is payable only once while the settlement continues. The surviving husband or wife is exempt from settlement estate duty, as well as from legacy and succession duty.

Estates not exceeding one thousand pounds in value and specific legacies of less than twenty pounds value are exempt from legacy and succession duty; and estates of less than one hundred pounds are exempt from estate duty also. The exemptions from estate duty include also a single annuity of twenty-five pounds or less, the property of common seamen, marines, or soldiers dying in the service, pensions payable by the Indian government to the widow or children of deceased officers, and pictures, books, etc., of scientific or historic interest given for public purposes, or to a university.

Both real and personal property is now assessed at its market value; "provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule A of the Income Tax Acts," making a deduction not exceeding five per cent of such annual value for expenses of management. In determining the value of the estate, reasonable funeral expenses and other debts payable to residents of the United Kingdom are deducted. The death duties on real estate may still be paid in instalments extending over eight years,

but interest is charged on the deferred payments, and estate duty on annuities, etc., may also now be paid in instalments.[1]

Apparently in order to avoid excessive differences in the tax due to insignificant differences in the valuation of estates, estate duty is now payable only on multiples of one hundred pounds, fractions of that value being disregarded; and the duty on estates exceeding one hundred and not exceeding two hundred pounds has been fixed at one pound.[2]

"Whereas certain property, by reason of the same belonging to or being vested in bodies corporate or unincorporate, escapes liability to probate, legacy, or succession duties, and it is expedient to impose a duty thereon by way of compensation to the revenue," an act of 1885 [3] established a tax of five per cent on the annual value, income, or profits of the property of corporations, societies, etc., after deducting all necessary outgoings. But this corporation tax does not apply to property devoted to public, religious, or charitable purposes, or to the promotion of education, literature, science, or the fine arts; to the property of friendly societies or savings banks; to the property of corporations established for trade or business, or whose capital stock is so held as to be liable to death duties; nor to property acquired with funds voluntarily contributed within thirty years, or acquired within thirty years where legacy duty or succession duty was paid on the acquisition thereof.

Since 1888 [4] half of the proceeds of the probate and account duties has been transferred to the local taxation account for the relief of local rates; and an equivalent amount of the estate-duty receipts is similarly treated. The total receipts from death duties in recent fiscal years were as follows:

[1] 59 and 60 Vict., chap. 28, § 16.

[2] *Ibid.*, § 17.

[3] 48 and 49 Vict., chap. 51, pt. 2.

[4] 51 and 52 Vict., chap. 41, § 21.

	1902–03.	1903–04.	1904–05.	1905–06.
	£	£	£	£
Estate duty[1]	13,820,404	13,531,391	13,272,562	13,524,647
Probate (and inventory) duty and account duty[2]	69,360	67,980	63,796	81,404
Temporary estate duty[2]	12,099	15,972	8,365	10,117
Legacy duty	3,001,793	2,966,960	3,144,999	3,006,562
Succession duty	965,673	698,184	724,499	673,851
Corporation duty	43,848	45,650	44,210	48,344
Total	17,913,177	17,326,137	17,258,431	17,344,925

[1] Including settlement estate duty.
[2] Payable only on property passing by deaths occurring prior to August 2, 1894.

II. Australasia

In the Australasian colonies succession duties are among the chief sources of revenue; and in some cases heavy progressive taxes have been imposed not from fiscal considerations alone, but also for the purpose of breaking up large estates. The rates are progressive in all the colonies, rising to ten per cent in Victoria, New South Wales, South Australia, and Western Australia, to thirteen per cent in New Zealand, and to twenty per cent in Queensland. Sir Charles Dilke tells us[3] that the institution of private property has not been weakened, nor capital driven from the colonies, by these progressive taxes. They have given very general satisfaction, and in almost every instance the rates have been increased after the tax has been in operation for a time.

[3] *Problems of Greater Britain*, pt. vi, chap. i.

The graduation according to relationship is much less elaborate than in European countries; usually not more than two or three classes of relatives are distinguished. None of the laws exempt direct heirs; they are usually taxed at one-half the rates which apply to more distant relatives.

The parliament of *Victoria* first imposed "duties on the estates of deceased persons" in 1870,[1] in order to meet the financial needs of the time. The rates varied from one per cent for estates of £1,000 and less to five per cent for estates of more than £20,000. In 1876[2] the large estates were made subject to further progression, with a maximum of ten per cent for estates of more than £100,000; and in October, 1892,[3] a new and very elaborate schedule was adopted, leaving the percentages approximately the same as before, but dividing taxable estates according to size into thirty-seven classes instead of nine. For estates exceeding £1,000 and not exceeding £5,000 the rate is two per cent, and those between £5,000 and £6,000 are taxed three per cent; from this point the rate is increased by increments of one-fifth of one per cent until it reaches ten per cent in the case of all estates of more than £100,000. But the decedent's widow, children, and grandchildren pay only one-half these rates when the estate does not exceed £50,000; the act of 1892 removed the discrimination in their favor in the case of all larger estates. There is no exemption in favor of bequests for charitable or educational purposes.

An amendment passed in 1889[4] exempts estates of £1,000 and less, and also provides that £1,000 shall be deducted from the value of all estates of less than £5,000, but in all other

[1] 34 Vict., no. 388.

[2] 39 Vict., no. 523.

[3] 56 Vict., no. 1261.

[4] 53 Vict., no. 1053; 54 Vict., no. 1060, § 100.

cases duty is payable on the full amount. This provision, together with the application of the percentage for each class to the whole amount, instead of only to the excess above the next lower class, results in a strange irregularity in the progression—an irregularity which is to be found in many other progressive tax schedules, but which is none the less anomalous on that account. For example, an estate valued at £4,990 would pay two per cent on £3,990, or £79 16s; while an estate valued at £5,010 would pay three per cent on £5,010, or £150 6s. In other words, a difference of twenty pounds in the valuation of the estate would make a difference of more than seventy pounds in the amount of the duty, leaving the heir fifty pounds poorer than he would be if the estate had been twenty pounds less. In theory, the rate does not jump at once from the slightly less than one and three-fifths per cent of the first case to the three per cent of the second, for by the words of the act an estate valued at just £5,000 would pay two per cent on the full amount; yet there is at this point a temptation to undervaluation which in the case of ordinary mortals must be almost irresistible. Attention was called to the anomaly when the bill was before the Legislative Council.[1] The object of the amendment was simply to give relief to small estates, which had formerly paid duties amounting in some cases to such sums as one shilling, and even one penny;[2] and in the form in which it was finally passed it was the result of a compromise. The Government had proposed an exemption of £500, a like amount to be deducted from all estates; but the exemption was raised to £1,000 in the Assembly, and it was largely to counterbalance the consequent loss of revenue that the deduction was made

[1] *Parliamentary Debates*, 1889, p. 2059. [2] *Ibid.*, p. 1654.

inapplicable to the larger estates.[3] This result might have been accomplished much more equitably, and with fewer words, by simply increasing the percentages for all classes in the schedule except the first, letting the deduction apply to all estates.

Every executor or administrator of a dutiable estate is required by law to file in the office of the Master-in-Equity of the Supreme Court an itemized account of the decedent's property and debts. The penalty prescribed for false statement is imprisonment for from one to three years, and a fine not to exceed a hundred pounds. In case the Master is dissatisfied with the valuation, he may appoint a valuator to fix the value of the property, and may then agree with the personal representative as to the final valuation, or may compel the attendance of witnesses and take evidence under oath as to the value of the estate. If the personal representative is dissatisfied with the final valuation of the Master-in-Equity he may appeal to the Supreme Court. The duty must be paid before the issue of probate or letters of administration. It is deemed a debt of the decedent to the Crown, and is to be paid out of the personal estate, after the payment of testamentary and funeral expenses, in priority to all other debts. If the personal property is insufficient, real estate is to be used to satisfy the duty. A *donatio causâ mortis*, or any conveyance made to take effect upon the death of the grantor, or with intent to evade the duty, is taxed as a part of the grantor's estate at his death. Settlements containing trusts or dispositions to take effect after the settler's death are also taxable; and settlements and deeds of gift are further liable to a progressive stamp tax with a maximum rate of two and one-half per cent.[2]

[1] *Parliamentary Debates*, 1889, p. 1657.

[2] 56 Vict., no. 1274.

The *New South Wales* Stamp Duties Act of 1880 [1] imposed a one per cent probate duty, which was replaced six years later [2] by a progressive tax of from one to five per cent. Very small estates were exempted by a provision which required probate or letters of administration only on estates exceeding two hundred pounds.

At the end of 1899 [3] New South Wales adopted outright the scale of duties in force in Victoria, but without any deduction from the value of estates of from £1,000 to £5,000. By an amendment of 1904 [4] the widow, children, and grandchildren are granted half rates only when the estate does not exceed £30,000.

Queensland, as long ago as 1866,[5] had a stamp duty on probates of wills and letters of administration, approximating one per cent where there was a will and one and one-half per cent in cases of intestacy. This duty was replaced in 1886 [6] by a progressive succession tax ranging from two per cent on estates between one hundred and one thousand pounds in value to five per cent on estates of more than £20,000, with half rates for the widow and children.

By the act of October 4th, 1892,[7] the succession duty varies from one per cent on small estates passing to direct heirs to twenty per cent on such portions of large estates as are bequeathed to others than relatives of the deceased. The rates in detail are shown in the following table:

[1] 44 Vict., no. 3.
[2] 50 Vict., no. 10.
[3] Act no. 45.
[4] Act no. 24, § 24.
[5] 30 Vict., no. 14.
[6] 50 Vict., no. 12.
[7] 56 Vict., no. 13, amended by 4 Edw. VII, no. 17.

Where the estate amounts to—	Per cent.
£200 and less than £1,000	2
1,000 " " 2,500	3
2,500 " " 5,000	4
5,000 " " 10,000	6
10,000 " " 20,000	8
20,000 or more	10

For the wife, husband, or lineal issue, one-half the above rates; for strangers in blood, double the above rates.

Where the husband or wife of the successor would be chargeable with a lower rate than the successor, the lower rate applies. Estates of less than two hundred pounds and single successions of less than twenty pounds are exempt. It is expressly provided that trusts for charitable or public purposes are chargeable at the rates which apply to strangers in blood.

Besides the succession duty, there is a probate duty on all estates of more than three hundred pounds net value, at the rate of one pound for each one hundred pounds or fraction thereof. This duty must be paid before the issue of probate or letters of administration.

The succession duty on personalty is payable when the heir comes into possession of the property; but in the case of real estate the duty is payable in four equal semi-annual instalments. The duty on an annuity or life estate is estimated according to the present value of the annuity, and paid in four annual instalments; but that on a legacy directed to be used for the purchase of an annuity is to be paid at once. Remaindermen are not liable to duty until they come into possession of the property; but if they desire, the duty may be commuted and paid in advance. In the case of plate, furniture, and other property not yielding income, there is no duty on any interest which does not carry with it the power to sell the property. The duty re-

mains a first charge on real estate for six years, or for twelve years if no notice of the succession is given or first instalment paid, and on personalty as long as the property remains in the hands of the successor. When a successor applies to be registered as the owner of land, unless he produces a certificate showing that the duty has been paid, the Registrar of Titles makes an entry "Succession duty not paid," which remains on the register until the duty is paid or ceases to become a charge on the land. The act prescribes a penalty of five per cent a month for neglecting to give notice of a succession when the tax becomes payable, or neglecting to pay the duty within twenty-one days after it has been finally assessed. Any person guilty of false declaration is liable to fine and imprisonment.

In 1876 *South Australia* adopted a scheme of probate and succession duties based on the English model. The succession duty on both real and personal property, like the English legacy and succession duty of that day, was graduated from one per cent for direct heirs to ten per cent for the most distant relatives and strangers in blood, and British practice was followed also in valuing the interest of a successor in real estate at the capitalized value of an annuity equal to the annual value of the property, as well as in several less important provisions. The probate duty was not so close a copy of the British model; the rate was one per cent where there was a will, and one and one-half per cent in cases of intestacy. In addition, there was a regressive probate fee [1] also discriminating against intestacy. It was graduated from five shillings on very small estates to five pounds on all estates of more than £5,000, where there was a will; in other cases it was increased one-half.

[1] No. 537 of 1891.

In 1893 a rather complex progressive schedule was substituted for the proportional duties formerly in force. Direct heirs and the surviving husband or wife pay from one and one-half per cent on amounts between five hundred and seven hundred pounds to ten per cent on amounts of £200,000 and upwards, except that minor children and widows are favored with one-half these rates when the net value of the entire estate is under £2000. The rates for collateral relatives are nearly the same, with the addition of a one per cent rate for amounts under two hundred pounds, except that the progression is much more rapid, the maximum rate of ten per cent, for example, applying to all amounts of £20,000 or more. Strangers in blood pay ten per cent in all cases.

Tasmania has for many years had a slightly progressive probate tax on personalty alone, for which there was substituted in 1904 [1] a tax on both real and personal estates ranging from two to ten per cent for direct heirs, with double rates for collateral heirs (except that the maximum is ten per cent), and a uniform ten per cent rate for very distant relatives and strangers in blood.

In *Western Australia,* probate duty is levied at the rate of one per cent on the excess above £1500, up to £2500; above that amount duty at from two to ten per cent is payable on the entire estate. Direct heirs, including the surviving husband or wife and step-children, pay half these rates.

The *New Zealand* Deceased Persons' Estates Duties Act of 1881 [2] imposed a progressive tax according to the following schedule:

[1] 4 Edw. VII, no. 9.

[2] 1881, no. 41.

On estates not exceeding £100, no duty.

On estates exceeding £100 and not exceeding £1,000, 2 per cent.

On any estate not exceeding £5,000:

2 per cent on the first £1,000,

3 per cent on the remainder.

On every additional £5,000 or any part thereof up to £20,000:

4 per cent on the first additional £5,000 or part thereof,

5 per cent on the second additional £5,000 or part thereof,

6 per cent on the third additional £5,000 or part thereof.

On every additional £10,000 or any part therof up to £50,000:

7 per cent on the first additional £10,000 or part thereof,

8 per cent on the second additional £10,000 or part thereof,

9 per cent on the third additional £10,000 or part thereof.

On any excess over £50,000, 10 per cent.

Although it looks complicated, this schedule was really quite simple; and in the uniformity of the progression it might well serve as a model for other scales of progressive taxation. It might be more simply written as follows:

On estates exceeding £100:

2 per cent on the first £1,000.

3 per cent on the next £4,000.

4 per cent on the second £5,000.

5 per cent on the third £5,000.

6 per cent on the fourth £5,000.

7 per cent on the third £10,000.

8 per cent on the fourth £10,000.

9 per cent on the fifth £10,000.

10 per cent on the excess over £50,000.

In 1885 [1] this schedule was replaced by the one given be-

[1] 1885, no. 21.

low, making the tax heavier in most cases, with an additional rate for strangers in blood:

On amounts not exceeding £100, no duty.
On amounts exceeding £100 and not exceeding £1,000:
  On the first £100, no duty,
  On the remainder, 2½ per cent.
On amounts exceeding £1,000 and not exceeding £5,000, 3½ per cent.
On amounts exceeding £5,000, up to £20,000, 7 per cent.
On £20,000 and any greater amount, 10 per cent.

Strangers in blood, except adopted children, pay three per cent in addition to the above rates, making the maximum rate thirteen per cent. The children, step-children, and grandchildren of the deceased are taxed at one-half the regular rates; the surviving wife or husband is entirely exempt except in the case of a limited estate, and is entitled to an abatement of half the tax in the case of a life interest in property not capable of yielding, at six per cent, an annual income of five hundred pounds. Settlements and deeds of gift [1] are subject to the tax.

Debts, funeral expenses, and testamentary expenses are deducted. It is the duty of the administrator to file with the Commissioner of Stamps within six months from the grant of administration a statement showing the amount of the property and charges, and to pay the duty on the final balance of the estate.

The Australasian states realized the following amounts from inheritance taxes in the fiscal year 1903-4:

[1] 1891, no. 30, § 8.

	Pounds.
New South Wales	225,115
Victoria	308,531
Queensland	96,454
South Australia	72,926
Western Australia	21,759
Tasmania	4,750
Commonwealth	729,535
New Zealand	142,917
Australasia	872,452

III. The Cape of Good Hope

Cape Colony has had a succession duty since 1864.[1] The

[1] Act no. 5.

rates are one per cent for lineal descendants and ancestors, two per cent for brothers and sisters, three per cent for descendants of a brother or sister, and five per cent for more distant relatives and strangers. The surviving husband or wife is exempt. No duty is payable on any succession of less than twenty pounds, on any child's portion of less than one hundred pounds, nor in any case where the value of the whole estate is less than one hundred pounds. Bequests to certain charitable institutions, such as hospitals and asylums, are exempt; but trustees for other public purposes pay the maximum duty of five per cent. Donations *mortis causâ* are taxed at the same rates as successions.

IV. India

The central government of India imposes a court fee of two per cent on probates of wills and letters of administration when the value of the estate exceeds one thousand rupees. The amount received from this source is not separately reported, but it is much less than a corresponding tax would yield in almost any other country, because of the peculiar joint family system of property prevailing among

the Hindoos. According to Hindoo laws, the child acquires his share in the joint family property at birth, and the share of each member varies at each birth or death in the family, without any legal formalities. Individuals, however, even though sharing in such joint family property, may have self-acquired property in addition, and on this the probate fee is payable at death.

V. Canada

With the exception of light probate duties which were in most cases scarcely more than fees, there were no inheritance taxes in Canada until 1892, when this form of taxation was resorted to by four of the principal provinces almost simultaneously. All seven of the principal provinces now have succession duties with elaborate progressive scales.

One of the most interesting of inheritance taxes was that introduced in *Ontario* by the act of April 14, 1892. It was worthy of note in many ways, being especially remarkable for its generous exemptions, for its high progressive rates for direct heirs, and for its purpose, the support of asylums and charitable institutions. In short, it was not so much a general tax as a demand upon the wealthy residents of the province to leave part of their wealth for benevolent purposes. The act began as follows:

> Whereas this province expends very large sums annually for asylums for the insane and idiots, and for institutions for the blind and for deaf mutes, and towards the support of hospitals and other charities, and it is expedient to provide a fund for defraying part of the said expenditure by a succession duty on certain estates of persons dying as hereinafter mentioned;
>
> Therefore Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

All estates not exceeding $10,000, and individual shares

not exceeding two hundred dollars, were exempt; and the direct heirs were taxable only when the whole estate exceeded $100,000. The decedent's father, mother, husband, wife, children, grandchildren, daughters-in-law, and sons-in-law paid two and one-half per cent when the estate was between $100,000 and $200,000 in value, and five per cent when it exceeded $200,000; the grandparents and more remote ancestors, brothers and sisters and their descendants, and uncles and aunts and their descendants paid five per cent, and all other persons ten per cent, whenever the estate exceeded $10,000 in value.

Subsequent legislation has greatly elaborated the schedule of rates and has modified the exemptions and even the purpose for which the tax was levied. According to the Succession Duty Act of 1907,[1] the rates applicable to the decedent's grandparents, parents, husband or wife, children, sons-in-law and daugthers-in-law are as follows:

Where the estate—	Per cent.
Exceeds $50,000 and does not exceed $75,000	1
" 75,000 " " 100,000	2
" 100,000 " " 150,000	3
" 150,000 " " 200,000	4
" 200,000	5

Where the share of any one person exceeds $100,000, however, an additional tax is levied according to the following scale:

Where the amount passing to one person—	Per cent.
Exceeds $100,000 and does not exceed $200,000	1
" 200,000 " " 400,000	1½
" 400,000 " " 600,000	2
" 600,000 " " 800,000	2½
" 800,000	3

Thus the maximum rate for direct heirs is eight per cent.

[1] 7 Edw. VII, chap. 10.

Whenever the value of the estate exceeds $10,000, so much of it as passes to any lineal ancestor more remote than parent or grandparent, or to the decedent's brothers or sisters, uncles or aunts, or any descendant thereof, is taxed at the rate of five per cent, with the following additions when more than $50,000 passes to any one person:

Where the amount passing to one person—					*Per cent.*
Exceeds	50,000	and does	not exceed	$100,000	1
"	100,000	"	"	150,000	1½
"	150,000	"	"	200,000	2
"	200,000	"	"	250,000	2½
"	250,000	"	"	300,000	3
"	300,000	"	"	350,000	3½
"	350,000	"	"	400,000	4
"	400,000	"	"	450,000	4½
"	450,000				5

So much of an estate exceeding $10,000 as passes to any more distant collateral relative than those named above, or to a stranger in blood, is taxed at the rate of ten per cent.

Individual shares of three hundred dollars or less are exempt, as well as estates of $10,000 or $50,000, according to the degree of relationship of the heirs to the decedent. Bequests for religious, charitable, or educational purposes to be carried out in Ontario, or by a corporation or person resident in Ontario, are also exempt, and life insurance payable to a direct heir is exempt when it does not exceed $5,000.

The succession tax is now levied for general provincial purposes.

Besides this tax there are approximately proportional probate fees,[1] both for the provincial treasury and for the judges of the surrogate courts. Together these fees amount in most cases to $1.50 for each $1,000 of the estate; the

[1] *Revised Statutes of Ontario*, chap. 50.

government fee is fifty cents for each $1,000, and the judge's fee is just double the government fee except in the case of estates of less than $3,000, when it is somewhat more.

Before the Ontario law of 1892 had been finally adopted, the *Nova Scotia* House of Assembly unanimously resolved to establish a very similar tax for a similar purpose.[1] The act [2] which was finally passed on the 30th of April of that year has remained in force with only minor changes. The exemptions are estates not exceeding $25,000 inherited by the immediate relatives and estates not exceeding $5,000 in other cases, and individual shares of two hundred dollars or less. There are three classes of heirs, as in Ontario; the nearest relatives pay two and one-half per cent on the excess over $25,000, but five per cent on any excess above $100,000; the second class pays five per cent and the third class ten per cent on the whole amount.

The proceeds of this tax are still applied to the care of the sick and insane, and the support of other charities. Property bequeathed for religious, charitable, or educational purposes is exempt.

The probate fees in Nova Scotia vary slightly with the value of the estate, but are uniform for all estates above $4,000.[3]

The passage of the laws of 1892 in Ontario and Nova Scotia was followed two months later by the adoption in *Quebec* of an inheritance tax levied according to somewhat different principles and for a purely fiscal purpose. The preamble of the act [4] contained a statement of the provincial debt, and explained the insufficiency of the revenue to meet

[1] *Journal and Proceedings of the House of Assembly*, 1892, p. 101.

[2] 55 Vict., chap. 6.

[3] *Revised Statutes of Nova Scotia*, 1900, title 28.

[4] 55 and 56 Vict., chap. 17.

the increased expenditures of the province. To meet the deficiency the act imposed an inheritance tax and a tax on transfers of real estate. Direct heirs were exempt from the former unless the net value of the estate exceeded $10,-000; the rate was then one per cent. Brothers and sisters and their descendants paid three per cent; other collateral relatives were divided into two classes, which paid six and eight per cent respectively; and the rate for strangers in blood was ten per cent.

In recent amendments[1] an elaborate progressive scale has been developed. Direct heirs now pay from one to five per cent, with a deduction of five thousand dollars from the value of the estate; and when the amount passing to any one such heir exceeds $100,000 there is an additional tax of from one to three per cent, the latter rate applying when the amount exceeds $800,000. On amounts not exceeding $10,000, brothers and sisters and their descendants pay five per cent, uncles and aunts and their descendants six per cent, great-uncles and great-aunts and their descendants seven per cent, and other collateral relatives eight per cent; when the amount exceeds $10,000, one-half of one per cent is added to these rates in the first three cases and one per cent in the fourth case. Strangers in blood pay ten per cent. When the amount passing to any one collateral heir or stranger exceeds $50,000, there is a further duty graduated from one to five per cent. Thus it results that the maximum rate is fifteen per cent, while direct heirs pay as high as eight per cent.

Whenever property devolves to any person domiciled outside of the British Empire, or to any association having its chief place of business outside of the Empire, there is an additional duty of five per cent. The exemption in favor of

[1] 6 Edw. VII, chap. 11; 7 Edw. VII, chap. 14.

religious, charitable, and educational bequests is limited to $1000 in each case.

New Brunswick also imposed a succession tax in 1892. The rates at present in force are as follows:

Parents, husband or wife, children, brothers and sisters, sons-in-law and daughters-in-law, one and one-fourth per cent up to $50,000, and two and one-half per cent of the excess above that amount; when the estate exceeds $200,000, five per cent on the whole property.

Grandparents, uncles and aunts and their descendants, grandchildren, etc., five per cent.

More distant collateral relatives and strangers in blood, ten per cent.

The exemptions include all estates of $5,000 or less, estates of $10,000 or less passing to the second class of relatives, and estates of $50,000 or less passing to the immediate relatives of the decedent; also individual shares of two hundred dollars or less, and bequests for religious, charitable, and educational purposes.

Where the property goes to any person residing out of New Brunswick, the rate of taxation is doubled.[1]

There is also a system of regressive probate fees to pay the salaries of judges and registrars and other expenses. For estates of $1,000 the fee amounts to two per cent; but for larger estates it is proportionately much less.[2]

In *Manitoba* the same rates apply to all classes of heirs, but the immediate relatives are favored with larger exemptions than others. According to the original Succession Duty Act of 1893,[3] the rates ranged from one per cent on inheritances of less than $25,000 to ten per cent on those of

[1] *Consolidated Statutes of New Brunswick*, 1903, chap. 17.

[2] *Ibid.*, chap. 118.

[3] 56 Vict., chap. 31.

$1,000,000 or more; but the tax has been increased,[1] without raising the maximum rate, by making that rate apply to all amounts of $500,000 and upwards. The rates, which are payable on the entire estate in each case, are as follows:

	Per cent.
Up to $25,000	1
Over 25,000 and up to $50,000	2
" 50,000 " " 100,000	3
" 100,000 " " 150,000	4
" 150,000 " " 200,000	5
" 200,000 " " 300,000	6
" 300,000 " " 400,000	7
" 400,000 " " 500,000	8
" 500,000	10

The exemptions are estates not exceeding $4,000, individual shares not exceeding $2,000, and amounts not exceeding $25,000 passing to direct heirs.

There is also a probate fee of fifty cents for every $1,000 of the estate, the proceeds of which go to a special fund for the maintenance of the administration of justice by the courts of the province. In addition to this, the judge is entitled to a slightly regressive fee which amounts in most cases to one dollar for every $1,000 or $1,500, but is never less than two dollars.[2]

Prince Edward Island, by the Act of May 19, 1894,[3] imposes a succession tax at the following rates:

Parents, husband or wife, children, grandchildren, brothers and sisters or their children, sons-in-law and daughters-in-law, one and one-half per cent; when the estate exceeds $50,000, two and one-half per cent.

Grandparents and more remote ancestors, uncles and aunts and their descendants, two and one-half per cent.

[1] 4 and 5 Edw. VII, chap. 45.

[2] *Revised Statutes of Manitoba*, chap. 37.

[3] 57 Vict., chap. 5.

Other relatives and strangers in blood, seven and one-half per cent.

Estates not exceeding $3,000 are exempt, and when immediate relatives inherit, estates of $10,000 or less are exempt. The tax does not apply to bequests for religious, charitable, or educational purposes within the province.

British Columbia adopted a succession duty in 1894,[1] with rates from one to five per cent, according to amount, but with half rates for direct heirs, exemptions of $25,000 in the case of estates passing to direct heirs and $5000 in other cases, and an abatement of $5000 in the former case. The schedule of rates has since been somewhat modified.[2] Where the property of the deceased exceeds $25,000 in value, and passes either in whole or in part to the father, mother, husband or wife, children, grandchildren, daughters-in-law or sons-in-law, the rates are as follows:

	Per cent.
Upon the value up to $100,000	1.5
Where the value reaches $100,000, but does not reach $200,000	2.5
Where the value exceeds $200,000	5

On property passing to grandparents or more distant lineal ancestors, brothers and sisters and their descendants, uncles and aunts and their descendants, the rate is five per cent of the value in excess of $5,000; more distant relatives and strangers in blood pay ten per cent of the value in excess of $5,000.

The proportional probate fees which have been exacted for many years do not seem to have been repealed when the succession duty was adopted. The fees were fixed originally by the Chief Justice of the Supreme Court, but more recently by a commission appointed by the Lieutenant-

[1] 57 Vict., chap. 47.

[2] 62 Vict., chap. 68; 64 Vict., chap. 35.

Governor in Council.[1] There was formerly a uniform rate of three per cent on personal estates alone; but since 1890 the rates have been one per cent for the decedent's father, mother, husband, brothers and sisters, and five per cent for all other persons except the widow and children, who are exempt.[2]

The succession duties received by some of the provinces in the year 1905-1906 were as follows:

Ontario	$1,015,713
New Brunswick	12,057
Prince Edward Island	6,703 [3]
Manitoba	71,310

VI. A Conflict of Jurisdiction

While the Finance Act of 1894 was before the Parliament at Westminster, the London representatives of Canada, the Australasian colonies, and the Cape of Good Hope joined in a memorial protesting against the application of the estate duty to property situated in the colonies.[4] Sir Vernon Harcourt declared that there was no proposal to tax any property in the colonies that was not already subject to legacy duty, but friends of the colonies in Parliament pointed out that the legacy duty was imposed before the colonies became self-governing. Still the Chancellor of the Exchequer would not consent to a remission of estate duty on all colonial property, but he gave his consent to the deduction of death duties locally due from the amount otherwise due the Crown, conditioned upon a similar treatment of British property by the colonies. Unconditional exemption of colonial property, he declared, "would be putting a tre-

[1] 35 Vict., no. 34.

[2] *Rules of Court*, 1890, Appendix M, p. cxiii.

[3] Nine months only.

[4] *Accounts and Papers*, 1894, C.—7433.

mendous premium on colonial investments;" a man might even draw a check and transfer all his personal property to colonial banks a month before his death. Harcourt scouted the idea that the proposal, even in its original form, was similar to that which led to the American revolution. Yet it is safe to say that the conference of colonial representatives, then assembling at Ottawa to consider how best to consolidate the Empire, and to pledge anew their faith therein, would have had its enthusiasm seriously dampened if the bill had not been modified.

Even in its final shape the bill was far from satisfactory to the colonies. The Prime Minister of Canada wired: "Council is of opinion that strong opposition should be made to proposed policy of levying death duties on property in Canada even with the amendment proposed." It was predicted that the modification would result in the death duties in all the colonies being increased to the same amount as the proposed estate duty, so that no revenue would result, and that the colonial governments, in proposing these increased taxes, would explain that they were forced upon them by the Imperial act, "with the result of endangering that loyal devotion to British institutions" existing in the colonies. "I greatly fear," wrote the High Commissioner for Canada, "that a serious question will be raised as to the right of Her Majesty's Government, under the free institutions that have been accorded to the colonies, to enact legislation which will have the effect of imposing taxation upon property situate in the colonies." [1]

[1] *Accounts and Papers*, 1894, C.—7451.

CHAPTER VII

THE UNITED STATES

I. Federal Inheritance Taxes

Very early in the history of the American Union, suggestions were made looking to the establishment of inheritance taxes of various kinds. On April 17, 1794, a special revenue committee of the National House of Representatives recommended a system of stamp duties, to include the following:

> On inventories of the effects of deceased persons, ten cents.
>
> On receipts for legacies, or shares of personal estate, where the sum is above $50 and not exceeding $100, twenty-five cents; more than $100 and not exceeding $500, fifty cents; for every further sum above $500, one dollar. Not to extend to wives, children, or grandchildren.
>
> On probates of wills, and letters of administration, fifty cents.[1]

Two years later the Committee on Ways and Means reported to the House

> That a duty of two per centum ad valorem ought to be imposed on all testamentary dispositions, descents, and successions to the estates of intestates, excepting those to parents, husbands, wives or lineal descendants.[2]

The first of these proposals was in great part adopted by

[1] *American State Papers in Finance*, 1: 277.

[2] *Ibid.*, 409.

the Stamp Act of July 6th, 1797,[1] which imposed a tax somewhat similar to the original English legacy duty upon receipts for legacies and shares of personal estate where the amount was more than fifty dollars. The tax was twenty-five cents when the amount was not more than one hundred dollars, fifty cents when the amount was above one hundred dollars and not more than five hundred dollars, and a dollar additional for every further sum of five hundred dollars; but the widow, children, and grandchildren were exempt. The act provided that every receipt for a legacy or share of personal estate should express the true sum paid, in default of which every person concerned either in giving or taking the receipt was made liable to a penalty of twenty dollars; but no penalty was prescribed for not giving any receipt at all. The act also imposed a tax of fifty cents on inventories.

This act was to take effect January 1st, 1798, and continue in operation five years; but a later act[2] postponed its commencement six months, and it was repealed,[3] together with the other acts imposing internal taxes, before the time set for its expiration. The repeal took effect July 1st, 1802, just four years after the act went into operation.

There was no inheritance tax during the War of 1812, but there probably would have been if the war had continued a few weeks longer. Secretary Dallas, in his report of January 21st, 1815, recommended a system of ten different taxes,[4] of which the first three were inheritance taxes, proposed in the following language:

1. A tax upon inheritances and devises, to be paid by heirs or devisees, may be made to produce........................ $900,000

[1] *U. S. Statutes at Large*, i, 527.

[2] *Ibid.*, i, 536.

[3] *Ibid.*, ii, 148.

[4] *American State Papers in Finance*, ii, 887.

2. A tax upon bequests, legacies, and statutory distribution, to be paid by the legatees, or legal representatives, may be made to produce	500,000
3. An auxiliary tax upon all testamentary instruments and letters of administration, to be paid by the executors and administrators, may be made to produce	200,000

But the treaty of peace had already been signed, and the levying of inheritance taxes was postponed until after the outbreak of the Civil War.

The war revenue act of July 1st, 1862, imposed what was known as the "legacy tax" on the devolution of personal property, and stamp taxes on probates of wills and letters of administration.[1] The legacy tax was graduated as follows:

	Per cent.
Lineal issue, lineal ancestors, brothers and sisters	.75
Descendants of a brother or sister	1.5
Brothers and sisters of a father or mother, and descendants thereof	3
Brothers and sisters of a grandfather or grandmother, and descendants thereof	4
Other collateral relatives, strangers in blood, and bodies politic or corporate	5

The tax was payable only when the entire personal estate of the deceased exceeded $1,000 in value; and the surviving husband or wife was exempt. Gifts and sales intended to take effect after the death of the grantor were subject to the tax. Every executor and administrator was required to furnish a statement of the personal property, verified by oath, to the assistant assessor of his district, and to pay the tax before distributing the property. Only the clear value was taxable.

The tax on probates of wills and letters of administration was levied according to the following scale:

[1] *U. S. Statutes at Large*, xii, 483, 485.

On estates not exceeding $2,500	$0.50
Exceeding $2,500, not exceeding $5,000	1.00
" 5,000, " " 20,000	2.00
" 20,000, " " 50,000	5.00
" 50,000, " " 100,000	10.00
" 100,000, " " 150,000	20.00
For every additional $50,000 or fraction thereof, $10.	

The act of June 30th, 1864, increased these taxes, and supplemented the legacy tax by a "succession tax" on real estate.[1] The exemptions remaining the same as before, the rates of the legacy tax were fixed as follows:

	Per cent.
Lineal issue, lineal ancestors, brothers and sisters	1
Descendants of a brother or sister	2
Brothers and sisters of a father or mother, and descendants thereof	4
Brothers and sisters of a grandfather or grandmother, and descendants thereof	5
Other collateral relatives, strangers in blood, and bodies politic or corporate	6

These same rates were made applicable to the succession tax on real estate, except that in that case brothers and sisters were taxed two per cent instead of one per cent. But there was no exemption of small estates from the succession tax, nor any exemption at first in favor of husband or wife. A retroactive clause in the amendatory act of the next year exempted wives, but not husbands.[2] It was expressly provided that real estate subject to a trust for charitable purposes should be taxed at the maximum rate of six per cent.

Persons liable to the succession tax were required to give notice to the internal revenue officials, with accounts show-

[1] *U. S. Statutes at Large*, xiii, 285, 287. [2] *Ibid.*, xiii, 481.

ing the value of the property and other particulars. A penalty equal to ten per cent of the amount of the tax was prescribed for failure to furnish returns within ten days after being notified, or for failure to pay the tax within ten days of the notification of assessment.

Deeds of gift without adequate consideration, even when immediately conferring possession, were made liable to the succession tax; and the Treasury officials so construed this provision as to tax transfers with manifestly inadequate consideration on the full amount of the transfer, and not merely on the excess of the value over the consideration.[1] Marriage was regarded as a value consideration, and hence conveyances made in consideration of marriage were not taxable.[2]

The same act which imposed the succession tax increased the tax on probates and letters of administration to one dollar for estates not exceeding $2,000, plus fifty cents for every additional $1,000 or fraction thereof.[3] The bonds of administrators and executors were subjected to a uniform tax of one dollar.[4] Estates of $1,000 and less were exempted from these stamp taxes by the amendatory act of March 2d, 1867.[5]

In January, 1866, the special Revenue Commission of which David A. Wells was chairman reported that up to that time the legacy and succession taxes had been practically a dead letter, having yielded only $546,703 during the previous fiscal year. The commission recommended certain administrative changes to make the execution of the law more effectual, and predicted that the annual product

[1] *Internal Revenue Record*, iii, 197. [2] *Ibid.*, v, 115.

[3] *U. S. Statutes at Large*, xiii, 300.

[4] *Ibid.*, xiii, 299; *Internal Revenue Record*, v, 60.

[5] *U. S. Statutes at Large*, xiv, 475.

of these taxes would be thereby increased to at least $3,-000,000. It was estimated that, allowing thirty-two years as the life-time of a generation, these taxes, even at the minimum rate of one per cent, ought to amount each year to $\frac{1}{3200}$ of the wealth of the country, or $5,000,000; but the commission evidently realized that such calculations as this could not be relied upon as accurate, and modified its prediction accordingly.[1]

Up to this time no penalty had been prescribed for the failure of executors and administrators to furnish the statements required of them. The act of July 13th, 1866, provided for a penalty not to exceed $1,000 for wilful neglect, refusal, or false statement. Persons liable to the succession tax were now required to give notice of their liability within thirty days after acquiring possession of the property. This act also provided that any shares of personal property going to a minor child of the decedent should be taxable only on the excess above $1,000.[2]

Hon. David A. Wells, in his second annual report as Special Commissioner of the Revenue, submitted to Congress in January, 1868, complained that the government did not yet collect in legacy and succession taxes more than half the amount to which it was rightly entitled, although there had been a large increase the preceding year. He recommended the appointment of special officers to have charge of this portion of the internal revenue.[3]

But the reduction of the internal revenue was now the order of the day. The legacy and succession taxes were repealed by section 3 of the act of July 14, 1870,[4] the repeal

[1] *Reports of the United States Revenue Commission*, p. 31.

[2] *U. S. Statutes at Large*, xiv, 140.

[3] *Report of the Special Commissioner of the Revenue*, 1868, p. 40.

[4] *U. S. Statutes at Large*, xvi, 256.

going into effect October 1st of the same year. Section 27 of this act provided that taxes already levied but not paid on bequests for literary, educational, and charitable purposes should not be collected. The probate and administration tax remained in force two years longer, but was repealed, together with the other stamp taxes, by the act of June 6, 1872,[1] the repeal going into effect October 1st of that year.

During the six years in which the legacy and succession duties were both in force, their annual product increased from half a million to three million dollars, and from one-fourth of one per cent to one and two-thirds per cent of the total internal revenue. The receipts for each year are shown below:

Fiscal Year.	Legacy Tax.	Succession Tax.	Total.	Percentage of Internal Revenue.
1862–63	$56,592.61	....	$56,592.61	0.138
1863–64	311,161.02	....	311,161.02	0.266
1864–65	506,751.85	$39,951.32	546,703.17	0.259
1865–66	924,823.97	246,154.88	1,170,978.85	0.376
1866–67	1,228,744.96	636,570.19	1,865,315.15	0.701
1867–68	1,518,387.64	1,305,023.60	2,823,411.24	1.477
1868–69	1,244,837.01	1,189,756.22	2,434,593.23	1.521
1869–70	1,672,582.93	1,419,242.57	3,091,825.50	1.669
1870–71	1,430,087.34	1,074,979.79	2,505,067.13	1.739

Fully two-thirds of the proceeds came from the heirs who

[1] *U. S. Statutes at Large*, xvii, 256.

paid at the minimum rate. About sixty-five per cent of the legacy tax was paid by direct heirs and brothers and sisters, and about seventy-five per cent of the succession tax was paid by direct heirs alone.

In the income-tax provisions of the National revenue act of 1894, income was so defined as to include "money and the value of all personal property acquired by gift or inheritance." Whenever the sum of an inheritance and the year's income proper exceeded $4000, therefore, the excess was to have been taxed two per cent. The annulment of the income tax by the Supreme Court did away with this inheritance-tax feature, which was regarded as an inseparable part of the income tax.[1]

The war revenue bill, as it passed the lower house of Congress at the end of April, 1898, contained among the stamp taxes of Schedule A a tax on probates of wills and letters of administration, beginning at fifty cents for small estates, and varying from about one twenty-five-hundredth to one ten-thousandth of the value of larger estates. The Senate Finance Committee struck out this tax and inserted instead a tax on legacies and distributive shares of personal property only, graduated both according to relationship, as were the legacy and succession taxes of the Civil War period, and also according to amount. The following minimum percentages were established for amounts from $10,000 to $25,000, only the surviving husband or wife being exempt:

	Per cent.
Lineal issue, lineal ancestor, brother or sister	¾
Descendants of a brother or sister	1½
Brother or sister of a father or mother, and descendants thereof.	3
Brother or sister of a grandfather or grandmother, and descendants thereof	4
More distant relatives, strangers in blood, and bodies politic or corporate	5

[1] Pollock *vs.* Farmers' Loan and Trust Co., 158 U. S. 601, 637.

These rates were increased one-half for amounts between $25,000 and $100,000, doubled for those between $100,000 and $500,000, multiplied by 2½ for those between $500,000 and $1,000,000, and multiplied by 3 for those of more than $1,000,000. The maximum rate was, therefore, fifteen per cent. Yet there was scarcely any opposition in Congress to this highly progressive scale. Senator Lodge did criticise it because the rates were apparently made to depend upon the whole amount of the decedent's personal estate instead of upon the size of the individual legacies; but when the matter came before the Supreme Court it was decided that the size of the individual shares was intended to determine the rate.[1]

An amendment adopted in 1901 [2] exempted bequests for uses of a religious, literary, charitable, or educational character, or for the encouragement of art, or made to societies for the prevention of cruelty to children, and elaborated the administrative provisions.

The section of the War Revenue Act imposing this tax on legacies and distributive shares was repealed by the act of April 12, 1902.[3]

The following table shows the receipts from this tax, and the proportion which such receipts were of the total internal revenue while the tax was fully in force:

[1] Knowlton *vs.* Moore, 178 U. S. 41.

[2] *U. S. Statutes at Large*, xxxi, 946.

[3] *Ibid.*, xxxii, 92.

Fiscal Year.	Receipts.	Percentage of Internal Revenue.
1898–1899	$1,235,435.25	0.452
1899–1900	2,884,491.55	0.977
1900–1901	5,211,898.68	1.698
1901–1902	4,842,966.52	1.781
1902–1903	5,356,774.90	2.322
1903–1904	2,072,132.12	
1904–1905	774,354.59	
1905–1906	142,148.22	

The following table, giving the receipts for two years in detail, indicates that more than two-thirds of the entire amount of inheritance taxes was paid by the relatives taxed at the lowest rates:

	1900–1901.	1901–1902.
Lineal issue or ancestor, brother or sister	$3,495,920.54	$3,781,468.83
Descendants of a brother or sister	912,343.69	639,940.42
Brother or sister of the father or mother, or a descendant of a brother or sister of the same.	68,767.37	79,997.32
Brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the same	4,840.75	4,082.84
Any other degree of collateral consanguinity than hereinbefore stated, or stranger in blood	730,026.33	337,477.11
Total	$5,211,898.68	$4,842,966.52

II. Pennsylvania

Pennsylvania was the first state in the Union to levy an inheritance tax, and with one doubtful exception the inheritance tax was the first state tax of any kind in Pennsylvania, being antedated only by a duty on the recording of certain legal papers,[1] which was more like a fee than a true tax. The collateral-inheritance tax was introduced in 1826 for the benefit of the internal improvement fund, and has remained in force, with occasional amendments, to the present day. As the Pennsylvania act of April 7th, 1826,[2] has directly or indirectly served as the model for much of the subsequent American legislation on this subject, the first section is worth quoting:

Sect. 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That from and after the first day of May next all estates, real, personal, and mixed, of every kind whatsoever, passing from any person who may die seized and possessed of such estate, being within this commonwealth, either by will or under the intestate laws thereof, or any part of such estate or estates, or interest therein, transferred by deed, grant, bargain or sale, made or intended to take effect, in possession or enjoyment, after the death of the grantor or bargainor, to any person or persons, or to bodies politic or corporate, in trust or otherwise, other than to or for the use of father, mother, husband, wife, children and lineal descendants born in lawful wedlock, shall be and they are hereby made subject to a tax or duty of two dollars and fifty cents on every hundred dollars of the clear value of such estate or estates, and at and after

[1] Worthington, *Historical Sketch of the Finances of Pennsylvania*, p. 87.

[2] Acts of 1825-26, chap. 72.

the same rate for any less amount, to be paid to the use of the commonwealth; and all executors, and administrators, and their sureties, shall only be discharged from liability for the amount of any and all such duties on estates, the settlement of which they may be charged with, by having paid the same over for the use aforesaid, as hereinafter directed: *Provided*, That no estate which may be valued at a less sum than two hundred and fifty dollars shall be subject to the duty or tax.

The tax was increased to the present rate of five per cent in 1846,[1] at a time of great financial embarrassment. After 1849 the proceeds were applied to the sinking fund,[2] until transferred to the general fund in 1874.[3] In 1849, also, the exemptions were extended to include daughters-in-law.[4] The next year an act [5] was passed declaring that the words "being within this commonwealth" in the original act should be construed to relate to persons as well as to estates. Other amendments have been passed from time to time,[6] in most cases merely making administrative changes, or providing for special cases not covered by the original act. The whole subject was codified in 1887 by "an act to provide for the better collection of collateral inheritance taxes." [7] Here it was expressly provided that the tax should apply to all estates in Pennsylvania, and to all estates situated elsewhere if the owner was domiciled in Pennsylvania at the time of his death; but this provision has been declared inoperative in so far as it applies to real estate situated outside of the state.[8]

[1] Laws of 1846, no. 390, § 14.

[2] Laws of 1849, no. 369.

[3] Laws of 1874, no. 60.

[4] Laws of 1849, no. 369.

[5] Laws of 1850, no. 147.

[6] Laws of 1829-30, no. 98; 1833-34, no. 52, §§ 62, 69; 1841, no. 49; 1846, no. 300; May 4th, 1855; 1878, no. 236; 1895, no. 243.

[7] Laws of 1887, no. 37; Brightly's *Purdon's Digest*, 1895, pp. 305-308.

[8] Bittinger's Estate, 129 Pa. 338.

Remainders were formerly taxable at the death of the testator; but under the revised law the tax becomes payable when the remainderman acquires possession, and is assessed on the value of the property at that time. But a remainderman may pay the tax at any previous time, on the value of the property after deducting the value of the life estate. An appraiser is appointed by the register of wills whenever occasion requires, from whose appraisement an appeal lies to the orphans' court. Executors and administrators are directed to deduct the tax from pecuniary legacies passing through their hands, and to collect the tax on specific legacies. It is made the duty both of the personal representatives and of the heirs to give notice to the register of wills of any real estate which is liable to the tax.

The tax was at first payable to the county treasurers, but in 1841,[1] to secure greater efficiency, the duty of collection was transferred to the registers of wills. For many years the registers retained a commission of five per cent, but in 1891 [2] their compensation was fixed at five per cent if the receipts amount to less than $200,000 a year, four per cent if they amount to $200,000 and less than $300,000, and three per cent if they are $300,000 or more. The registers are required to make quarterly returns and payments to the State Treasury.

When the tax is paid within three months of the decedent's death there is a discount of five per cent; when not paid within a year it bears interest at twelve per cent, unless the nonpayment is caused by unavoidable delay in the settlement of the estate, in which case the interest is only six per cent, or whatever less amount is realized from the estate in the meantime.

[1] Laws of 1841, no. 49, § 3.

[2] Laws of 1891, no. 50.

The exemptions remain as they were fixed by the original act of 1826 and the amendment of 1849 exempting daughters-in-law, except that in 1905 [1] "children of a former husband or wife" were exempted, while bequests for the care of family burial lots are also exempt.[2] The courts have held that the exemptions do not include a grandmother, an adopted child, or a son's widow who has remarried.[3] Attempts to evade the tax by the creation of trusts and by deeds intended to take effect after the death of the grantor have repeatedly been defeated by the courts.[4]

The receipts from the collateral-inheritance tax have grown to more than a million dollars annually.

In 1897 [5] the Pennsylvania legislature passed an act imposing a tax of two per cent on personal property passing to the direct heirs exempt from the collateral-inheritance tax; but an exemption of $5000 led the Supreme Court of the state to declare the act unconstitutional.[6] The Pennsylvania constitution declares that all laws exempting property from taxation, other than certain kinds of property specified, shall be void; and the court held that this prohibition applied to the direct-inheritance tax. That the same reasoning has not been applied to the exemption of $250 from the collateral-inheritance tax seems to be due to the priority of that exemption to the existing constitution.

Besides the collateral-inheritance tax, Pennsylvania levies a uniform tax of fifty cents on every probate of a will or

[1] Laws of 1905, no. 181. [2] Laws of 1903, chap. 13.

[3] McDowell *vs.* Adams, 45 Pa. 430; Comm. *vs.* Nancrede, 32 Pa. 389; Comm. *vs.* Powell, 51 Pa. 438.

[4] Tritt *vs.* Crotzer, 13 Pa. 451; Wright's Appeal, 38 Pa. 507; Appeal of Dubois, 121 Pa. 368.

[5] Laws of 1897, no. 47.

[6] Cope's Estate, 191 Pa. 1.

grant of administration,[1] as part of the system of taxes known as taxes on offices and process, or more commonly as taxes on writs, wills, and deeds. This is in addition to the fees of the registers, a part of which also goes into the state treasury.[2]

III. Louisiana

For many years Louisiana had a ten per cent tax on foreign heirs. In 1828 [3] the legislature enacted

> that any person who is not a citizen of the United States, or is not domiciliated in any part of said states, shall be subject to pay to this state ten per cent. on all sums which may be due to him as an heir, legatee or donee, by any succession which may be opened in this state.

Personal representatives were instructed to retain the amount of the tax and pay it to the Louisiana officials. The wording of the law was changed in later years [4] so that it read as follows:

> Each and every person, not being domiciliated in this State, and not being a citizen of any state or territory in the Union, who shall be entitled, whether as heir, legatee or donee, to the whole or any part of the succession of a person deceased, whether such person shall have died in this state or elsewhere, shall pay a tax of ten per cent. on all sums or on the value of all property which he may actually receive from said succes-

[1] Laws of 1829-30, no. 157, § 5; 1831-32, no. 80, § 36; 1878, no. 227, § 8; Brightly's *Purdon's Digest*, pp. 1476, 1625.

[2] Laws of 1831-32, no. 80, § 37; 1878, no. 227, §§ 8, 13; Brightly's *Purdon's Digest*, p. 786.

[3] Acts of 1828, no. 95, §§ 1, 2.

[4] Acts of 1842, no. 154, § 4; 1855, no. 315, §§ 7, 8; *Revised Civil Code*, 1870, arts. 1221-23; *Revised Statutes*, 1870, §§ 13, 1113, 1470, 13,683, 13,684; Voorhies' *Revised Statutes*, 1876, §§ 3345, 3346.

sion, or so much thereof as is situated in this state, after deducting all debts due by said succession.

The tax was assailed as unconstitutional by a foreign heir, who maintained that it was a regulation of foreign commerce and a tax upon exports. The United States Supreme Court in 1850 denied that it was either.[1] It was also claimed to be in conflict with the following article of a treaty concluded between the United States and the King of Würtemberg in 1844:[2]

The citizens or subjects of each of the contracting parties shall have power to dispose of their personal property within the States of the other by testament, donation, or otherwise, and their heirs, legatees, and donees, being citizens or subjects of the other contracting party, shall succeed to their said personal property, and may take possession thereof, either by themselves or by others acting for them, and dispose of the same at their pleasure, paying such duties only as the inhabitants of the country where the said property lies, shall be liable to pay in like cases.

The United States Supreme Court decided that this did not apply to the case of a citizen or subject of either country residing at home and disposing of property there in favor of a citizen or subject of the other, and therefore did not invalidate the Louisiana tax.[3] But strangely enough, the Louisiana courts held that the tax was rendered inoperative, so far as French heirs were concerned, by a treaty of 1853 which provided that in all the states of the Union whose laws permitted it, so long as those laws should remain in

[1] Mager *vs.* Grima, 8 How. 490.

[2] *U. S. Statutes at Large*, viii, 588.

[3] Frederickson *vs.* Louisiana, 23 How. 445.

force, Frenchmen should enjoy the rights of holding property in the same manner as citizens of the United States, and should not be subjected to taxes on transfers or inheritance different from those paid by American citizens.[1]

The tax was abolished in 1877,[2] but was revived at the old rate in 1894,[3] and the proceeds dedicated to the Charity Hospital in New Orleans.

The new constitution of Louisiana, adopted in 1898, makes provision for another kind of partial inheritance tax apparently designed mainly to discourage and compensate in some degree for evasions of property taxes by the well-to-do. It provides that the legislature shall have power to levy, for the support of the public schools, a tax upon all inheritances, legacies, and donations, (except those in the direct line less than $10,000 in value, and bequests to educational, religious, or charitable institutions) at rates not exceeding three per cent for the direct line and ten per cent in other cases; but adds that the tax shall not be enforced when the property inherited or donated shall have borne its just proportion of taxes prior to the time of such donation or inheritance.[4] After some urging by Governor Heard, the Legislature of 1904 faithfully carried into effect these provisions of the Constitution by imposing such a "special inheritance tax" at the maximum rates,[5] which were reduced at the next session[6] to two per cent for direct heirs and five per cent for others. It is the duty of probate judges to require satisfactory proof that an estate is not liable to

[1] Succession of Dufour, 10 La. An. 391.

[2] Acts of 1877, no. 86.

[3] Acts of 1894, no. 130.

[4] *Constitution of Louisiana*, arts. 235, 236.

[5] Acts of 1904, no. 45.

[6] Acts of 1906, no. 109.

the tax before placing the heirs in possession. In cases where the tax appears to be due, it must be paid to the tax collector of the parish, and the receipt presented to the judge. It is made the duty of parish school superintendents (and of the president of the school board in New Orleans) to see that the act is carried out, and they may call on district attorneys to take legal proceedings to enforce it. The resultant funds are not to be budgeted against till the end of the year, "this being an uncertain and contingent source of revenue."

IV. Virginia

As early as 1687 the settlement of estates in Virginia was made the occasion of collecting an "enormous fee" of two hundred pounds of tobacco and cask[1]—a uniform charge by the Governor for impressing probates and letters of administration with the public seal, without which they were invalid. A much smaller probate fee was imposed in the nineteenth century under the name of a tax; this was the tax of fifty cents on every "probat" of a will or grant of letters of administration, introduced in 1843.[2] It was at first charged to the persons liable to pay it by the commissioners of the revenue in the various counties, on information furnished by the clerks of courts; but after the first year it was collected by the clerks themselves, and no will could be admitted to "probat," nor letters of administration granted, until the tax had been paid.[3]

The collateral-inheritance tax was first introduced in Virginia by the acts of January 26 and February 6, 1844.[4]

[1] Burk, *History of Virginia*, ii, 300; Ripley, *Financial History of Virginia*, p. 97.

[2] Acts of 1842-43, chap. 1, § 6; chap. 2, § 9.

[3] Acts of 1843-44, chap. 2, § 2.

[4] Acts of 1843-44, chap. 1, § 6; chap. 3.

Estates valued at $250 or more, passing to persons other than the decedent's father, mother, husband, wife, brothers, sisters, or lineal descendants, were subjected to the tax, at rates to be fixed by the legislature in the annual revenue laws. For a number of years the rate was two per cent. Executors and administrators were required to pay the tax on property passing through their hands, "to the sheriff or collector of the public revenue of the proper county or corporation," before distributing the property. In the case of property other than money or real estate, and not converted into cash by the executor or administrator, the tax was to be paid on the appraised value according to the inventory and appraisement required by law. Clerks of court were instructed "diligently to enquire after and take an account of" all devolutions of real estate, and to report annually to the commissioners of the revenue in each county, who were then to charge the tax to the owners of the property, in addition to the annual land tax.

The collateral-inheritance tax appeared in the Code of 1849 [1] in a slightly changed form. It was now made applicable to estates within the commonwealth, without regard to the decedent's domicile. The language of the original act had been ambiguous on this point. Estates of $250 were now exempted, as well as estates of less than that amount. If the personal representative failed to pay the tax on any estate before paying over the estate, the law prescribed a penalty of ten per cent per annum from the time the estate was paid over; and it was deemed to have been paid over at the end of one year unless it appeared otherwise. It was made obligatory upon the personal representative to take a copy of a receipt for the taxes paid, and for this a fee of fifty cents was charged.

[1] Chap. 35, §§ 10, 42; chap. 39, §§ 6-12; chap. 40, § 3.

The rates of two per cent for the collateral-inheritance tax and fifty cents for the probate and administration duty were continued in force down to 1852.[1] In that year the probate and administration tax was raised to seventy-five cents.[2] In 1856 it was again increased, this time to one dollar.[3] In that year the legislature omitted to fix the rate of the collateral-inheritance tax, and this omission was held to operate as a repeal; the chapter fixing the rates of taxation had been repealed annually, and there could be no tax unless its amount or the means of ascertaining it were prescribed by law.[4]

The collateral-inheritance tax was not again enacted until 1860, when a tax of two per cent was imposed upon the collateral devolution of real estate of greater value than $250.[5] In 1861, a few weeks before the breaking out of the war, the tax was again applied to all forms of property, and nephews and nieces were added to the list of exempt successors.[6] The next year the probate and administration tax, which had remained at one dollar since 1856, was increased to $1.50.[7] In 1863 the collateral-inheritance tax was raised from two to three per cent, and the probate and administration tax to $2.50.[8] There was a general increase of the rates of taxation at this time, with the result that at the beginning of 1864 there was a large surplus in the treas-

[1] Acts of 1843-44 to 1847-48, chap. 1, §§ 6, 7; 1848-49, chap. 1, §§ 1, 3; Code of 1849, chap. 40, § 3.

[2] Acts of 1852, chap. 17, § 16.

[3] Acts of 1855-56, chap. 9, § 30.

[4] Fox's Administrators *vs.* Commonwealth, 16 Grat. 1; Acts of 1852, chap. 17, § 20; 1852-53, chap. 8, § 16; 1853-54, chap. 2, § 19.

[5] Acts of 1859-60, chap. 1, §§ 9, 38; Code of 1860, chap. 35, §§ 9, 38; chap. 39, §§ 5-11.

[6] Acts of 1861, chap. 1, § 12.

[7] Acts of 1859-60, chap. 3, § 44; 1861, 1861-62, chap. 1, § 18.

[8] Acts of 1863, chap. 1, §§ 15, 23.

ury. The operation of the existing tax law was accordingly suspended for that year.[1] In 1865 the probate and administration tax appeared at its old rate of one dollar,[2] while the collateral-inheritance tax, after being omitted from a few tax laws, reappeared in 1866 [3] at two per cent, and was increased in 1867 to four and in 1870 to six per cent.[4] In the latter year also a graduated scale was introduced for the probate and administration tax. The rate was one dollar for estates not exceeding one thousand dollars and ten cents for every additional hundred dollars or fraction thereof, or approximately one-tenth of one per cent.[5] This scale of rates remains in force to-day.[6] The collateral-inheritance tax remained at six per cent until 1884, when it was repealed.[7] In 1874, however, brothers, nephews and nieces were dropped from the list of favored relatives. In 1880 and 1881 the city of Lynchburg attempted to levy an additional tax on inheritances, but this was held to be unauthorized by law.[8]

The collateral-inheritance tax was reimposed in 1896 [9] at the rate of five per cent, the exempt relatives being the decedent's parents, grandparents, husband or wife, brothers and sisters, and lineal descendants. At the following session [10] property used exclusively for public, benevolent, edu-

[1] Acts of 1863-64, chap. 1.

[2] Acts of 1864-65, chap. 39, § 33.

[3] Acts of 1865-66, chap. 1, § 20; chap. 3, §§ 3, 18.

[4] Acts of 1866-67, chap. 64, § 3; 1869-70, chap. 45, § 18; chap. 226, § 3.

[5] Acts of 1869-70, chap. 226, § 13.

[6] Code of 1904, §§ 579, 590; Acts of 1883-84, chap. 450, § 12.

[7] Acts of 1870-71, chap. 193, § 3; 1871-72, chap. 385, § 3; Code of 1873, chap. 33, § 19; chap. 35, § 3; chap. 36, § 1; Acts of 1874, chap. 240, §§ 21, 22; 1874-75, chap. 206, § 20; chap. 239, § 12; 1875-76, chap. 161; chap. 162, § 12; 1881-82, chap. 61; chap. 119, § 12; 1883-84, chaps. 389, 513.

[8] Schoolfield *vs.* Lynchburg, 78 Va. 366.

[9] Acts of 1895-96, chap. 334.

[10] Acts of 1897-98, chap. 539.

cational, or religious purposes was also exempted, and certain charitable and educational bequests made in the meantime were exempted by special acts.[1]

V. Maryland

The General Assembly of Maryland established a collateral-inheritance tax in 1845,[2] to aid in paying the debts of the state. The only exemptions were those in favor of the decedent's father, mother, wife, children, and lineal descendants, and all estates of less than $500; in all other cases the rate was two and one-half per cent. Executors and administrators were directed to pay the tax on devolutions of personal property to the register of wills. In the case of real estate the tax was at first paid with the general property tax, according to valuations by the levy courts; but after the first year the value was determined by the orphans' courts, and the tax was paid to the registers of wills.[3]

The collateral-inheritance tax was accompanied by a tax of ten per cent on the commissions allowed by the orphans' courts to executors and administrators; and it was expressly provided that in fixing the commission no allowance was to be made for the tax, as it was intended to be paid out of the commission, and not out of the estate.[4] As this tax is incidental to the devolution of property, it may properly be mentioned here. It might be called a death duty, though it can scarcely be termed an inheritance tax.

The laws relating to these two taxes were strengthened by numerous administrative amendments during the first five years after their adoption,[5] and as thus amended were em-

[1] Acts of 1897-98, chaps. 562, 563.
[2] Laws of 1844-45, chap. 237.
[3] Laws of 1845-46, chap. 202.
[4] Laws of 1844-45, chap. 184.
[5] Laws of 1845-46, chap. 71, § 3; chap. 391; 1846-47, chap. 344; 1847-48, chaps. 222, 230; 1849-50, chap. 447, § 4.

bodied in the Code of 1860.[1] In 1864 there was a general reduction of taxes. The tax on executors' and administrators' commissions was reduced to five per cent, but was restored to the original figure the next year;[2] the collateral-inheritance tax was reduced to one and one-half per cent, and its original rate was not restored until 1874.[3] In 1880 surviving husbands were added to the list of exempt relatives, and the time for the payment of the tax on a remainder was postponed until after the determination of the preceding estate.[4]

Both of these taxes are now levied at the original rates.[5] Executors and administrators are directed to pay the inheritance tax on personal property before paying any legacies or distributing the shares of an estate; if the payment is not made within thirteen months from the date of their administration, they forfeit their commissions. The estates subject to the tax are valued by appraisers; when a life estate or limited interest is created, the proportion of the tax to be paid by each of the beneficiaries is determined by the orphans' court as they become successively entitled. The law contains no exemption in favor of bequests to charitable institutions, but one such bequest was exempted some years ago by special act of the legislature, on the ground that the institution was destitute of ready money and unable to pay.[6] No discount is allowed for

[1] P. G. L., art. 81, §§ 106-114, 124-147. See also Laws of 1861-62, chaps. 18, 157.

[2] Laws of 1864, chap. 372; 1865, chap. 127.

[3] Laws of 1864, chap. 200; 1874, chap. 483, § 113.

[4] Laws of 1880, chaps. 444, 455.

[5] Code of 1888, P. G. L., art. 81, §§ 97-125; Laws of 1892, chap. 473; Laws of 1894, chap. 493.

[6] Laws of 1890, chap. 249.

prompt payment. Payments are made in all cases to the registers of wills, who are allowed to retain five per cent of both the inheritance tax and the tax on commissions, as long as their entire compensation from all sources does not exceed certain amounts fixed by the state constitution.[1]

Executors and administrators pay the tax on their commissions at the time of the passage of their accounts. Any legacy left to an executor by way of compensation is reckoned in the commission; and the tax is payable whether the commission allowed by the orphans' court is claimed by the personal representative or not. Being payable whenever an estate is settled, it forms a considerable source of revenue, and in some years the receipts from this source have exceeded those from the collateral-inheritance tax itself. Together these two taxes pay about five per cent of the state expenses.

VI. North Carolina

The General Assembly of North Carolina, by "an act to increase the public revenue" approved January 18, 1847,[2] imposed an inheritance tax of one per cent on all real estate of the value of three hundred dollars or more, and personal property of the value of two hundred dollars and upwards, passing to any person other than the decedent's widow and lineal descendants. Deeds of gift and other conveyances made with intent to defeat the purpose of the act were declared void. At the next session it was made the duty of personal representatives having in their hands personal property liable to the tax to apply to the courts for the appointment of appraisers.[3]

The tax was graduated according to relationship in 1855.[4]

[1] Banks *vs.* State, 60 Md. 305.

[2] Laws of 1846-47, chap. 72.

[3] Laws of 1848-49, chap. 81.

[4] Public Laws of 1855, chap. 37; *Revised Code*, 1855, chap. 99, § 7.

On real estate of the value of three hundred dollars or personal property of the value of two hundred dollars going to any one person the rates were made one per cent for brothers and sisters, two per cent for uncles and aunts and their descendants, and three per cent for more remote relatives and strangers. The exemptions were extended to include the decedent's husband or wife, lineal descendants and ancestors, sons-in-law and daughters-in-law. There was no exemption in favor of churches or educational institutions.[1] A penalty of five hundred dollars was prescribed for attempting to divide or settle any estate liable to the tax without lawful administration.

This law remained unchanged for four years.[2] In 1859[3] the tax was made applicable to all real and personal estate above the value of one hundred dollars, situated within the state, the list of exempt relatives remaining substantially the same. The rates of one, two, and three per cent were continued[4] in force until 1865, when they were doubled.[5] The next year[6] the exemption of one hundred dollars was dropped. From this time on[7] there were only two rates, one for uncles and aunts and their descendants, and another for remote relatives and strangers; the former was diminished at first to two and then to one per cent, and the lat-

[1] Barringer *vs.* Cowan, 2 Jones Eq. 436.

[2] Public Laws of 1856-57, chap. 34.

[3] Public Laws of 1858-59, chap. 25.

[4] Public Laws of 1860-61, chap. 32; 2d extra session, 1861, chap. 31; adjourned session, 1862-63, chap. 70.

[5] Public Laws of 1864-65, chap. 27.

[6] Public Laws of 1866, chap. 21.

[7] Public Laws of 1866-67, chap. 72; 1868-69, chap. 108; 1869-70, chap. 229; 1870-71, chap. 227; 1871-72, chap. 58; 1872-73, chap. 144; *Battle's Revisal*, 1873, chap. 102.

ter varied in different years from one to two and one-half per cent. This tax was discontinued altogether by being omitted from the revenue act of 1874.[1]

In 1897,[2] after an interval of twenty-three years, the inheritance tax was re-established and extended to direct heirs. The rates were now fixed at two-thirds of one per cent for the direct line, and one and one-half per cent in other cases, bequests for charitable uses excepted.

In 1901 North Carolina not only re-enacted the inheritance tax as to personal property, but went further in the direction of radically progressive rates than any other state in the Union had ever gone. Although alone among the eastern states in the adoption of the progressive principle, she prescribed the highest rates in force anywhere in the Union. The statute [3] plainly shows the influence of Federal legislation. Only the surviving husband or wife was exempted; taxable heirs were divided into five classes, with basic rates ranging from three-fourths of one per cent to five per cent, and a maximum rate of fifteen per cent, just as in the case of the National inheritance tax of 1898. But the North Carolina tax was really heavier than its model, because the exemption was only $2,000 instead of $10,000, and the basic rates were multiplied by 1½, 2, 2½, or 3 in the case of comparatively small legacies; thus the maximum rates were imposed upon legacies exceeding $50,000 instead of $1,000,000. Since 1903, however, these progressive rates have applied only to very distant relatives and strangers in blood.[4] It is worthy of note that the National and state taxes together would have claimed approximately

[1] Laws of 1873-74, chap. 134. [2] Public Laws of 1897, chap. 168.

[3] Public Laws of 1901, chap. 9.

[4] Public Laws of 1903, chap. 247, § 6; 1905, chap. 588, § 6; 1907, chap. 256, § 6.

thirty per cent[1] of the value of a legacy exceeding $1,000,000 going to a distant relative or stranger in blood — a higher rate than is in force in any considerable country in the world. But it should be remembered that the North Carolina tax, like the temporary Federal tax after which it was patterned, applied only to personal property. The revenue act of 1907 seems to extend it to real estate, but the language of the act is not consistent.

VII. Alabama

The Alabama revenue act of 1848[2] imposed a tax of two per cent on every bequest of personal property and devise of real estate made in favor of any person or corporation other than the testator's wife, children, grandchildren, brothers and sisters. At the next session of the legislature the list of exempt relatives was increased by the addition of the husband, parents, and adopted children, and the tax was made applicable to deeds of gift.[3]

Later enactments restricted the tax to legacies, apparently leaving real estate untaxed. The rate was increased during the Civil War, rising at one time as high as ten per cent.[4] It was afterward reduced to one-half of one per cent in cases where letters testamentary were taken out in Alabama, and three per cent in other cases.[5] The tax was abolished in 1868 by being omitted from the annual revenue law.[6]

The new Constitution of Alabama, adopted in 1901, provides that an inheritance tax of not more than two and

[1] Not quite thirty per cent, because it was the practice of the National government to tax only what remained after the payment of the state tax.

[2] Acts of 1847-48, no. 1, § 86.

[3] Acts of 1849-50, no. 1, § 1.

[4] Acts of 1862, no. 1, §§ 2, 24; 1864, nos. 63, 64.

[5] Acts of 1865-66, no. 1, §§ 2, 3; 1866-67, no. 260, §§ 2, 4; Code of 1867, §§ 434, 436.

[6] Acts of 1868, no. 1.

one-half per cent may be imposed upon heirs other than the predecessor's father, mother, husband or wife, brothers and sisters, children, and lineal descendants;[1] but the legislature seems not to have availed itself of this permission. Perhaps it was not deemed worth while to levy a tax subject to such unreasonable restrictions. Yet there would appear to be nothing in the constitution which would prevent inheritance taxes if this absurd attempt at legislation had not been inserted.

VIII. Delaware

The inheritance tax was introduced in Delaware in 1869.[2] The rate was at first three per cent for all collateral relatives, but in 1871[3] this uniform rate was replaced by a relationship scale somewhat similar to that of the Federal tax which had been repealed the year before, except that direct heirs were not included. The rates were as follows:

	Per cent.
Brothers and sisters and their descendants	1
Uncles and aunts and their descendants	2
Great-uncles and great-aunts and their descendants	3
Other collateral relatives and strangers	5

Estates of five hundred dollars or less were exempted, and no tax was required of the decedent's widow. The registers of wills were allowed a commission of one-half of one per cent for receiving the payments. The tax was repealed in 1883[4] except as to strangers in blood, so that it is now of very little importance. One portion of the Dela-

[1] *Constitution of Alabama*, § 219.

[2] *Laws of Delaware*, vol. xiii, chap. 390, §§ 12-22.

[3] *Ibid.*, vol. xiv, chap. 21.

[4] *Ibid.*, vol. xvii, chap. 11; *Revised Statutes of Delaware*, 1893, pp. 66-69.

ware Tax Commission of 1891-93 recommended that this source of revenue be turned over to the counties.[1] The tax was repealed in 1893, but the repealing act was in turn repealed at the same session, reviving the tax.[2]

IX. Wisconsin

A Wisconsin law of 1868, "relative to the compensation of county judges," besides providing for the payment of the salaries of such judges out of the county treasuries, made it the duty of executors, administrators, and guardians to pay the county treasurers, for the use and benefit of the counties in which the estates administered by them were situated, sums varying from twenty dollars for estates between $1,000 and $2,000 to seventy-five dollars for estates of more than $10,000. Milwaukee county and a few other counties in which the county courts had civil jurisdiction were excepted from the operation of the act.[3] The law was repealed in 1872,[4] but in 1877 the same charges were established in Milwaukee county by "an act regulating the salary of the county judge of Milwaukee county."[5] In 1889 estates not exceeding $3,000 were exempted, and the rates were fixed at one-half of one per cent on the first $500,000 and one-tenth of one per cent on the remainder;[6] so that while the charge was proportional in most cases,

[1] *Report of the Undersigned Members* [J. B. Pennington, E. H. Bancroft, D. J. Layton] *of the Delaware Tax Commission*, p. 15.

[2] *Laws of Delaware*, vol. xix, chaps. 553, 554.

[3] General Laws of 1868, chap. 121; *Revised Statutes*, 1871, chap. 117, §§ 59-62, 69.

[4] General Laws of 1872, chap. 40.

[5] Laws of 1877, chap. 98; *Revised Statutes*, 1878, § 2483. See also Laws of 1880, chap. 262.

[6] Laws of 1889, chap. 176.

estates of more than half a million dollars were treated more tenderly than those of less value. The title of the new act declared that the charge it imposed was to be "in lieu of fees," but the Wisconsin Supreme Court held that such an exaction could not be a fee, nor in lieu of, nor equivalent to, a fee, but was a tax imposed as a condition precedent to the administration of the estate; and as a tax it was declared unconstitutional because it applied to but one county.[1]

The State Tax Commission of 1898 having recommended an inheritance tax, the legislature of 1899[2] provided for a tax on inheritances of personal property, in the case of estates valued at $10,000 or more, at one per cent for direct heirs and brothers and sisters and five per cent in other cases, bequests for religious, charitable, and educational purposes being exempted. Among the administrative provisions was a proviso that from the valuation of the property should be deducted an amount equal to the fair valuation of all personal property over and above $10,000 upon which a personal property tax had been paid the previous year; in other words, the tax was made applicable only to personal property which escaped assessment for the property tax. The county treasurers were directed to retain fifteen per cent of the proceeds for county purposes.

This act was declared unconstitutional in 1902 because the exemption was based on the value of the entire estate, instead of on the value of the separate legacies or shares. The State Supreme Court held that no rational distinction could be drawn between two legatees simply because the estates from which their legacies came were of different sizes.[3]

[1] State *vs.* Mann, 76 Wis. 469; 45 N. W. 526.

[2] Laws of 1899, chap. 355.

[3] Black *vs.* State, 113 Wis. 205; 89 N. W. 522.

The legislature of 1903 promptly passed a new act[1] avoiding the defect pointed out by the court and providing for a tax elaborately graduated both according to relationship and according to the amount of the inheritance, the exemption allowed also varying with the relationship. The tax applies only to the excess above the exempt amount in each case, and the higher rates in the progressive scale apply only to the excess above the amounts taxable at the next lower rates. Primary rates ranging from one per cent to five per cent having been fixed according to relationship for inheritances not exceeding $25,000, these rates are multiplied by one and one-half, two, two and one-half, and three for the excess above $25,000, $50,000, $100,000 and $500,000 respectively, as shown in the following table:

	Exemption.	Not exceeding $25,000.	$25,000–$50,000.	$50,000–$100,000.	$100,000–$500,000.	Excess above $500,000.
		Per cent.	Per cent.	Per cent.	Per cent.	Per cent.
Widow	$10,000	1	1½	2	2½	3
Husband, direct heirs	2,000					
Brothers and sisters and their descendants, sons-in-law, daughters-in-law	500	1½	2¼	3	3¾	4½
Uncles and aunts and their descendants	250	3	4½	6	7½	9
Great-uncles and great-aunts and their descendants	150	4	6	8	10	12
All others	100	5	7½	10	12½	15

Bequests to corporations organized under the laws of Wisconsin solely for religious, charitable, or educational purposes are exempt, as also are bequests to counties and municipalities for public purposes.[2]

[1] Laws of 1903, chap. 44.

[2] Laws of 1905, chap. 96.

When the tax is paid within one year from the time of the transfer a discount of five per cent is allowed; when it is not paid within eighteen months interest is charged from the time of the transfer. Payment is required to be made to the county treasurers, who pay the receipts into the state treasury quarterly, retaining for county use five per cent of the first $50,000 paid each year, three per cent of the next $50,000, and two per cent of all additional sums.

X. Minnesota

"An act to fix the compensation of judges of probate and provide a fund for the payment of the same," passed by the Minnesota legislature in 1875,[1] contained the following provision:

For the purpose of reimbursing the county treasury for the salaries provided to be paid in this act to the judge of probate, it shall be the duty of each executor, administrator or guardian to pay or cause to be paid to the county treasurer for the use and benefit of the county in whose probate court proceedings are to be instituted to settle the estate of any deceased person, the following sums, according to the value of the estate and property of such deceased person, as shown by the inventory and appraisal, that is to say:

$10 when such value shall exceed $1,000, and shall not exceed $5,000;
$20 when such value shall exceed $5,000, and shall not exceed $10,000;
$30 when such value shall exceed $10,000, and shall not exceed $15,000;
$50 when such value shall exceed $15,000, and shall not exceed $20,000;
And seventy-five dollars in all cases where the value of the estate shall exceed the sum of $20,000; and in addition all sums necessarily expended in serving or publishing notices required by law.

It was provided that no proceedings should be had in any cause for the settlement of an estate, subsequent to the re-

[1] General Laws of 1875, chap. 37; *General Statutes of Minnesota*, 1878, chap. 7, §§ 8, 9.

turn of the inventory, until after the payment of the prescribed charges.

In 1885 [1] the exemption was increased to $2,000 and the following scale of charges established:

$ 10	when the value shall exceed	$ 2,000	and shall not exceed	$ 5,000;
25	when the value shall exceed	5,000	and shall not exceed	10,000;
35	when the value shall exceed	10,000	and shall not exceed	15,000;
50	when the value shall exceed	15,000	and shall not exceed	20,000;
75	when the value shall exceed	20,000	and shall not exceed	35,000;
100	when the value shall exceed	35,000	and shall not exceed	50,000;
200	when the value shall exceed	50,000	and shall not exceed	75,000;
300	when the value shall exceed	75,000	and shall not exceed	100,000;
500	when the value shall exceed	100,000	and shall not exceed	150,000;
800	when the value shall exceed	150,000	and shall not exceed	200,000;
1,000	when the value shall exceed	200,000	and shall not exceed	500,000;
5,000	when the value shall exceed	500,000.		

It will be noticed almost at a glance that the scale was clumsily contrived. A classified scale with a uniform charge for each class is unequal enough at best; but in this case the figures appear to have been thrown together at random, without regard to whether the scale was to be in its general effect proportional, progressive, or regressive. Taking either the maximum or minimum column, or the mean between them, the percentages change from progressive to regressive and back again a surprising number of times; and when the half-million mark is reached there is a sudden jump from one-fifth of one per cent to one per cent. It is not surprising, therefore, that the Supreme Court of Minnesota decided that the act violated the constitutional requirement that all taxes must be "as nearly equal as may be." The charges it imposed were held to be taxes, and not fees; and the rule of equality was held to be violated both by the $2,000 exemption and by the arbitrary schedule.[2]

[1] General Laws of 1885, chap. 103; *General Statutes, Supplement*, 1888, chap. 7, § 8.

[2] State *vs.* Gorman, 40 Minn. 232; 41 N. W. 948. See p. 156, *infra*.

But the taxation of inheritances in Minnesota was not destined to be permanently prevented by this decision. A number of inheritance-tax bills were introduced at the legislative session of 1893; they were strenuously opposed by the Minneapolis Board of Trade, but one of them became law by the act of April 18, which proposed a constitutional amendment authorizing a tax, either proportional or progressive, but not exceeding 5 per cent, on inheritances above a fixed amount. This amendment [1] was adopted by the people at the election of the following year by a vote of 108,332 to 41,242; and it first bore fruit in 1897 [2] in a statute taxing collateral inheritances of personal property 5 per cent, with an exemption of amounts under $5000, and direct inheritances of personal property one per cent, all amounts under $10,000 being exempt. Persons and corporations exempt by law from taxation on real and personal property were exempted also from the inheritance tax; and brothers and sisters were included among the heirs to whom the lower rate and higher exemption were to apply.

This act was based more upon the terms of the New York law than upon the provisions of the constitutional amendment, and the result was that it was held not to conform to the requirements of the latter. The amendment, which was in the form of a proviso added to the section enjoining equality of taxation, was couched in the following terms:

> *And provided further*, that there may be by law levied and collected a tax upon all inheritances, devises, bequests, legacies, and gifts of every kind and description above a fixed and specified sum, of any and all natural persons and corporations.

[1] General Laws of 1893, chap. 1; General Laws of 1895, p. 3.

[2] General Laws of 1897, chap. 293.

Such tax above such exempted sum may be uniform, or it may be graded or progressive, but shall not exceed a maximum tax of five per cent.

The Supreme Court of the state pointed out four particulars in which the statute violated the requirements of the amendment. The act was declared unconstitutional (1) because it allowed a larger exemption to lineal than to collateral heirs, while the amendment authorized only one uniform exemption; (2) because it attempted to tax the entire inheritance, and not merely the excess above the exempt amount; (3) because it exempted persons and corporations exempt from taxation on their property, and so did not apply to "all inheritances" of "all natural persons and corporations;" (4) because it applied only to personal property.[1]

The legislature's next effort, in 1901,[2] avoided just one-half of the constitutional objections to the law of 1897. The rates prescribed were the same, and seem to have been intended to apply to both real and personal property; but a section carelessly copied from the former law had the effect of restricting the tax to personal property as before. The exemption was $500 for direct and collateral heirs alike; in the case of collateral heirs, however, the tax was made applicable to the entire inheritance instead of only to the excess above the amount of the exemption. It naturally followed that this act was declared unconstitutional on two counts.[3]

The next year the legislature in special session passed another inheritance-tax act[4] which was even more plainly un-

[1] Drew *vs.* Tifft, 79 Minn. 175.

[2] General Laws of 1901, chap. 255.

[3] State *ex rel.* Frye *vs.* Bazille, 87 Minn. 500.

[4] General Laws of 1902, chap. 3.

constitutional, in that the rate prescribed for collateral heirs was ten per cent. The rate for direct heirs was only one-half of one per cent, and there was an exemption of $10,000 in all cases. The act was of course declared invalid.[1]

In recommending the taxation of inheritances to the legislature of 1905, Governor Johnson referred to the unsuccessful efforts of previous legislatures, and suggested that, the defects having been pointed out by the Supreme Court, it should be possible to pass an act which would be approved. This suggestion bore fruit in an act[2] which differs from most inheritance-tax laws in making no distinction between different classes of relatives, graduating the rates of taxation solely according to the amount inherited. Heirs of every degree are required to pay, on the excess above $10,000 inherited by each, one and one-half per cent up to $50,000, three per cent on amounts of $50,000 or over and less than $100,000, and five per cent on amounts of $100,000 or more. The tax applies at the same rates to all gifts exceeding $10,000 in value. In the case of a gift the tax is payable directly to the State Treasurer; in other cases it is payable to the treasurer of the county in which the probate court having jurisdiction is located, but is credited to the state revenue fund.

This fifth attempt of the legislature (the fourth under the constitutional amendment of 1894) has been sustained by the Supreme Court of the state.[3] The act contains some ambiguities and evident errors of language nearly sufficient to invalidate it, but the court was able to discern the intent of the legislature through the imperfections of the statute, and corrected the most glaring errors by construction.

[1] State *ex rel.* Russell *vs.* Harvey, 90 Minn. 180.

[2] General Laws of 1905, chap. 288.

[3] State *ex rel.* Foot *vs.* Bazille, 97 Minn. 11.

...itional provisions which have given so much trouble have been repealed by an amendment [1] adopted at the last general election, which greatly increases the power of the legislature over taxation, and has been interpreted by the Attorney-General as making its power to impose inheritance taxes unlimited.

XI. New Hampshire

In 1878 the New Hampshire legislature, on the recommendation of the State Tax Commission, imposed a collateral-inheritance tax of one per cent, "to defray the cost of probate courts," as the title of the act [2] declared. It was provided that

> All estates settled in the probate courts of this State, and all transfers of property from the dead to the living, by gift, bequest, or devise, and every succession made under the laws of this State, regulating the distribution of intestate estates, exclusive of the just indebtedness of each and all of said estates, shall pay one per cent on the value of said estates, to be deducted from each gift, bequest, or distributive share, by the administrator or executor, so that each gift, bequest, or distributive share shall pay its proportional rate.

Exemptions were made in favor of husband, wife, children, and grandchildren. The law was similar in many respects to the federal legacy and succession tax statutes. The tax was made payable to the registers of probate, who were required to make quarterly returns and payments to the State Treasurer.

This form of taxation was declared unconstitutional by the Supreme Court of New Hampshire in 1882.[3] The next

[1] Proposed by Laws of 1905, chap. 168.

[2] Laws of 1878, chap. 74; *General Laws of New Hampshire*, 1878, chap. 64.

[3] Curry *vs.* Spencer, 61 N. H. 624. See p. 157, *infra*.

year the legislature formally repealed the statute and provided that the amounts which had been paid in should be refunded on presentation of the receipts.[1]

One of the constitutional amendments adopted by New Hampshire in 1903 extended the permissible objects of taxation to include franchises and "property when passing by will or inheritance." Governor McLane, in calling the legislature's attention to these two new available sources of revenue, expressed the opinion that a tax on inheritances would produce considerable revenue without injustice to any one. The legislature however, in imposing such a tax in 1905,[2] seriously restricted its revenue-producing power by wholly exempting direct heirs and brothers and sisters, as well as charitable, educational, and religious institutions, and municipalities. In all other cases the rate of taxation is uniformly five per cent, apparently without any exemption of small amounts.

XII. Illinois

An act passed by the Illinois legislature in 1887,[3] for the purpose of making the Cook County probate court self-sustaining, provided for a considerable increase in the usual fees, and in addition prescribed that every applicant for a grant of letters testamentary, of administration, guardianship, or conservatorship by that court should state in the petition the value of the estate, real and personal, and that on the grant of the letters a docket fee should be paid according to the following schedule:

[1] Laws of 1883, chaps. 50, 75.

[2] Laws of 1905, chap. 40; amended by Laws of 1907, chaps. 64, 68, 69, 82, 86, and 138.

[3] Laws of 1887, p. 183.

When the estate does not exceed $5,000	$ 5
When the estate exceeds $5,000 and does not exceed $20,000	10
When the estate exceeds 20,000 and does not exceed 50,000	20
When the estate exceeds 50,000 and does not exceed 100,000	50
When the estate exceeds 100,000 and does not exceed 300,000	100
When the estate exceeds 300,000 and does not exceed 1,000,000	250
When the estate amounts to $1,000,000 and upwards	1,000

In 1891 [1] the scale was at once equalized and simplified by making the charge for estates of more than $5,000 one dollar for every $1,000 of the estate, or about one-tenth of one per cent; the charge for estates of $5,000 and less remaining as before. When the deceased leaves a widow or children residing in Illinois, and the entire estate does not exceed $2,000, the probate judge is instructed to remit the fee; and he may in his discretion suspend, modify, or remit the fee in any case where the estate does not exceed $500.

In 1895 [2] Illinois adopted a progressive inheritance tax; but the progressive rates were not applied to direct heirs, but only to distant relatives and strangers in blood, though the nearer relatives were favored with generous exemptions which really had the effect of introducing progression. The rates prescribed by this law were:

For the decedent's father, mother, husband, wife, child, or other lineal descendant, brother, sister, wife or widow of a son, husband of a daughter, or adopted child, 1 per cent on the excess above $20,000 received by each person.

For the decedent's uncle, aunt, niece, nephew, or lineal descendants of the same, 2 per cent on the excess above $2,000 received by each person.

In all other cases (estates of less than $500 being exempt)—

On all estates of $10,000 and less	3 per cent.
On all estates of over $10,000 and not exceeding $20,000	4 per cent.
On all estates of over $20,000 and not exceeding $50,000	5 per cent.
On all estates of over $50,000	6 per cent.

[1] Laws of 1891, p. 137.

[2] Laws of 1895, p. 301.

The validity of this act under the Illinois and United States constitutions was soon brought in question, at first with varying results; but the decisions of the higher courts, state and federal, were uniformly favorable to the act. The question was carried to the United States Supreme Court, which decided in April, 1898, that the progressive scale and generous exemptions were not in violation of the Fourteenth Amendment.[1]

The Illinois law of 1895 has remained in force, with comparatively few amendments; but in 1901 [2] bequests to hospitals or for charitable, religious, educational, and scientific purposes were exempted, and the compensation of appraisers was increased from three dollars to a possible maximum of ten dollars a day, in the discretion of the county judges.[2]

XIII. New York

The New York inheritance tax was first imposed in 1885,[3] but amendments of greater or less importance have been made at nearly every subsequent session of the legislature. The original act provided for a tax of five per cent on collateral inheritances, classing brothers and sisters with the exempt relatives. This was supplemented in 1891 [4] by a tax of one per cent on direct inheritances of personal property of the value of $10,000 or more; and finally, in 1903 [5] this direct-inheritance tax was extended to apply to real estate also. The latest complete revision of the law was passed in 1905,[6] but it left the main features the same as

[1] Magoun *vs.* Trust and Savings Bank, 170 U. S. 283. See p. 175, *infra.*

[2] Laws of 1901, p. 269.

[3] Laws of 1885, chap. 483.

[4] Laws of 1891, chap. 215.

[5] Laws of 1903, chap. 41.

[6] Laws of 1905, chap. 368.

before; namely, a tax of one per cent on estates of the value of $10,000 or more passing to the decedent's parents, husband or wife, children and lineal descendants born in lawful wedlock, brothers and sisters, sons-in-law and daughters-in-law, and adopted children, and a tax of five per cent in other cases wherever the estate is worth five hundred dollars or more. The one per cent class includes not only legally adopted children, but also any orphan to whom the decedent stood continuously for ten years in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's fifteenth birthday.[1] Bequests to bishops or to religious, educational, charitable, missionary, benevolent, hospital or infirmary corporations, including those organized for Bible or tract purposes, or to other corporations exempt from taxation on real or personal property, are exempt; as are also bequests of personal property other than money or securities to corporations or associations organized exclusively for the moral or mental improvement of men or women, or for scientific, literary, library, patriotic, cemetery, or historical purposes, or for the enforcement of laws relating to children or animals, and not for pecuniary profit. The exemption has been held not to apply to foreign corporations.[2]

If the tax is paid within six months from the decedent's death, a discount of five per cent is allowed; if it is not paid within eighteen months, interest is charged at the rate of ten per cent from the time of the decedent's death, except that when there is an unavoidable delay in the determination of the tax the rate of interest is only six per cent until the cause of delay is removed.

The inheritance tax has become one of the state's most important sources of revenue; and together with the taxes

[1] Step-children were added to this class in 1907 (chap. 204).

[2] Matter of Prime, 49 N. Y. St. Rep. 658; 136 N. Y. 347.

on corporations, stock transfers, and the liquor traffic it has resulted in a very marked reduction in the state property tax, which now amounts to only about $1,400,000 yearly. The inheritance tax averages nearly $5,000,000 a year, and it is not unusual for a single estate to yield several hundred thousand dollars.

So successful has the inheritance tax been as a revenue-producer that the state fiscal officers and tax commissions have repeatedly recommended making it a still more important source of revenue by increasing the rates on large estates. A recommendation of this kind made by Comptroller Roberts in 1897 [1] led to the passage by the legislature of a progressive inheritance-tax bill providing for rates as high as fifteen per cent on estates of more than $3,000,000 going to collateral heirs, and ten per cent on estates exceeding $4,000,000 passing to direct heirs. The bill passed the lower house by unanimous vote, but failed to receive the Governor's signature. Mr. William D. Guthrie was retained to appear before the Governor in opposition to the bill, and he argued against the progressive tax on both constitutional and politico-economic grounds.[2] Instead of formally vetoing the bill, Governor Black permitted it to expire without his signature; but he filed with it an elaborate memorandum, based largely upon Mr. Guthrie's address, giving his reasons for not signing it. These reasons were that additional revenue was not needed; that if personal property escaped taxation it was the fault of public officials and not of the law; that a heavy inheritance tax might cause hardship in the case of deaths in quick succession in the same family; that it would drive away capital;

[1] *Annual Report of the Comptroller*, January, 1897, pp. 18-29.

[2] *Argument of William D. Guthrie . . . in opposition to the Dudley Bill Imposing a Graduated Inheritance or Transfer Tax*, N. Y., 1897.

and above all, that the rates proposed in the bill were not uniform nor fair. These arguments have not appeared convincing to the tax commission which reported during the last session of the legislature, for it recommended a progressive inheritance tax with a maximum rate of twenty-five per cent.

XIV. West Virginia

A collateral-inheritance tax was adopted by West Virginia in 1887.[1] The rate was made two and one-half per cent, as in Maryland, and the Maryland law was closely followed throughout; but the exemption was extended to all estates of less than $1,000, and the clerks of the county courts, to whom the tax was made payable, were allowed only two per cent commission instead of five. The only persons exempted by the original act were the decedent's father, mother, wife, children, and lineal descendants; but in 1891 [2] the surviving husband was added to the list.

In 1904 the collateral-inheritance tax was elaborated [3] by distinguishing three classes of taxable relatives. In place of the former uniform rate of two and a half per cent, the decedent's brothers and sisters now pay three per cent, his grandparents five per cent, and more distant relatives and strangers seven and a half per cent. Bequests for public purposes are exempt; but the former exemption of estates of less than $1000 is omitted from the new law. The administrative provisions were also much changed and elaborated. The tax is now payable into the state treasury on the assessment of the State Tax Commissioner, to whom quarterly reports are made by the clerks of the county courts. Double taxation by conflicting jurisdictions is avoided by reciprocal

[1] Acts of 1887, chap. 31; Code of 1891, chap. 32, § 51a.

[2] Acts of 1891, chap. 116.

[3] Acts of 1904, chap. 6.

provisions. The receipts, which were insignificant under the original law, have been increased many fold by the higher rates and better administrative provisions of the act of 1904. The legislature of 1907 still further increased the importance of the tax by extending it to direct heirs, the rate in their case being one per cent.[1]

XV. Connecticut

The Connecticut Tax Commission of 1887 reported in favor of an inheritance tax,[2] and the proposal was adopted with some modification in 1889.[3] All property within the jurisdiction of the state, whether tangible or intangible, passing to persons other than the decedent's father, mother, husband or wife, lineal descendants, adopted children and their descendants, sons-in-law and daughters-in-law, except bequests for charitable, benevolent, educational, religious, or strictly public purposes, was made subject to a tax of five per cent of its value above the sum of $1,000.

During the legislative session of 1893 there was some agitation for the repeal of the tax, and various modifications were also proposed, among them being exemptions of real estate in favor of the nearer collateral relatives, and of the second devolution of property within a year; but the only amendment adopted was one[4] adding brothers and sisters to the list of exempt relatives. The legislature of 1897 imposed a tax of one-half of one per cent on direct inheritances, and reduced the collateral-inheritance tax to three per cent.[5] In either case, the tax applies only to so much of an estate as exceeds $10,000 in value. The exemption

[1] Acts of 1907, chap. 217.

[2] *Report of the Special Commission on Taxation*, 1887, pp. 33, 46.

[3] Public Acts of 1889, chap. 180.

[4] Public Acts of 1893, chap. 257.

[5] Public Acts of 1897, chap. 201.

in favor of charitable, educational, religious, and other institutions is discontinued, as also is the preference for a few years shown brothers and sisters; the only relatives paying the lower rate are the decedent's parents, husband or wife, lineal descendants, and legally adopted children.

XVI. Massachusetts

For two years, from 1841 to 1843,[1] Massachusetts levied a light probate duty of one-fourth of one per cent, to pay the expenses of the probate courts.

In October, 1889, the Boston Executive Business Association's special committee on taxation, of which Mr. Jonathan A. Lane was chairman, recommended in its report a collateral-inheritance tax like that of New York, and also a tax of two and one-half per cent or more on direct inheritances of personal property, to replace the personal property tax. It was estimated by the committee that these two taxes would yield at least $4,000,000 a year. An inheritance tax had not long before this been proposed and defeated in the committees of the legislature; but after the project had been recommended by two successive governors a bill introduced at the session of 1891 met with a better fate, becoming law on June 11.[2] It imposed a tax of five per cent on collateral relatives only, the exempt successors being the decedent's father, mother, husband or wife, lineal descendants, brothers and sisters, adopted children and their descendants, sons-in-law and daughters-in-law, and charitable, educational, and religious societies or institutions which are exempt from the property tax. The original act applied only to estates of more than $10,000 in value; this exemption was discontinued in 1901,[3] but not

[1] Acts of 1841, chap. 123; repealed by Acts of 1843, chap. 11.

[2] Acts of 1891, chap. 425.

[3] Acts of 1901, chap. 297.

until after individual shares of five hundred dollars or less had been exempted.[1]

The tax was at first made payable either to the county treasurer or directly to the Treasurer of the Commonwealth, but since 1895 has been payable only to the latter officer.[2]

The Massachusetts Tax Commission of 1893-4 strongly urged the adoption of a progressive inheritance tax.[3] The commission which reported in 1897 referred to the difficulties, constitutional and other, of progressive taxation, but recommended a direct-inheritance tax of five per cent, the rate which already applied to collateral heirs.[4] It was proposed, however, to exempt estates of $10,000 or less, and to grant estates of from $10,000 to $25,000 an abatement of $5000. This tax and a habitation tax were suggested to take the place of the existing taxation of intangible personalty. The House Committee on Taxation, however, reported adversely to both these proposals;[5] and nothing came of them. More recently, Governors Bates and Douglas have recommended extending the inheritance tax to direct heirs; and the legislature of 1907 has done so by an act[6] effective September 1st. Relatives of Class A, comprising the decedent's husband or wife, lineal ancestors and descendants, adopted children and their descendants, sons-in-law and daughters-in-law, are taxed one per cent on amounts of $50,000 or less, one and one-half per cent on amounts between $50,000 and $100,000, and two per cent on amounts exceeding $100,000. Relatives of Class B, comprising

[1] Acts of 1895, chap. 307. [2] Acts of 1895, chap. 430.

[3] *Full Report of the Joint Special Committee on Taxation*, 1894, pp. 20-25.

[4] *Report of the Commission on Taxation*, 1897, pp. 92-104, 189-199.

[5] House Document no. 1259, p. 37.

[6] Acts of 1907, chap. 563.

brothers and sisters, nephews and nieces, are required to pay three per cent on amounts not exceeding $25,000, four per cent on amounts between $25,000 and $100,000, and five per cent on amounts exceeding $100,000. More distant relatives and strangers are taxed five per cent regardless of amount. Shares passing to the decedent's husband or wife, father, mother, children or adopted children are taxable only when they exceed $10,000, and other shares only when they exceed $1,000 in value; and no share is to be reduced by the tax below the amount of the exemption. Bequests for charitable purposes, or to educational or religious societies or institutions whose property is exempt from taxation, or to cities or towns for public purposes, are exempt.

The act contains some interesting provisions intended to avoid double taxation. Shares of non-resident decedents in a railroad, street railway, telegraph, or telephone company incorporated in Massachusetts and also in another state are considered within the jurisdiction of Massachusetts only to the extent that the line is in that state. Inheritance taxes paid elsewhere on property of residents of Massachusetts are to be deducted from the tax payable there, and those paid elsewhere on property within the jurisdiction of Massachusetts are also to be deducted if estates of Massachusetts citizens are similarly favored in the other state or country.

XVII. Tennessee

A five per cent collateral-inheritance tax was introduced in Tennessee in 1891,[1] and continued in 1893 both by the general revenue act[2] and by a separate inheritance-tax act[3]

[1] Acts of the Extraordinary Session, 1891, chap. 25, § 6.

[2] Acts of 1893, chap. 89, § 7.

[3] *Ibid.*, chap. 174.

with somewhat different exemptions. The provisions of the general revenue act having been repealed by implication by the revenue act of 1895, the other act, which exempted estates valued at less than two hundred and fifty dollars, remains in force,[1] with an amendment [2] exempting religious, charitable, scientific, literary, and educational institutions. The payments are made to the clerks of the county courts, and accounted for by them to the State Comptroller.

XVIII. New Jersey

New Jersey has a five per cent collateral-inheritance tax dating from March 23, 1892.[3] The exempt relatives are the decedent's father, mother, husband or wife, brothers and sisters, children and lineal descendants, sons-in-law and daughters-in-law; and all estates of less than five hundred dollars are also exempt. The original act has been revised at various times [4] so as to exempt bequests to benevolent and religious institutions, including public libraries and Bible and tract societies.

An amendment of 1906 [5] introduces the tax-inquisitor principle, by providing that when no letters testamentary or of administration are taken out on an estate liable to inheritance tax within one year from the decedent's death, the Comptroller may enter into an agreement with any person giving him information of the property liable to taxa-

[1] Zickler *vs.* Union Bank and Trust Co., 104 Tenn. 277; 57 S. W. 341.

[2] Acts of 1903, chap. 561.

[3] Acts of 1892, chap. 122.

[4] Acts of 1893, chap. 210; 1894, chap. 210; 1898, chap 62. The act of 1893 was declared inoperative so far as devises of real estate were concerned, because devises were not mentioned in the title. Van Riper *vs.* Heppenheimer, 17 N. J. Law Jour. 49; Dobermiller's Appeal, *ibid.*, 378.

[5] Acts of 1906, chap. 227.

tion, to pay him a proportion of the tax collected from such property.

When the tax is paid within one year from the decedent's death there is a discount of five per cent; after the expiration of that period interest is charged at ten per cent.[1]

XIX. Ohio

Early in 1893[2] the General Assembly of Ohio imposed a collateral-inheritance tax applying only to estates of more than $10,000, the rate being three and one-half per cent on the excess above that amount. The following year[3] the rate was increased to five per cent, the exemption reduced to $200, and the proceeds assigned three-fourths to the state and one-fourth to the counties. At the same time a supplementary act[4] was passed providing for a progressive tax on direct inheritances derived from estates exceeding $20,000 in value. Ohio was thus the first state in the Union to apply the progressive principle to the inheritance tax, as well as one of the first to tax direct heirs. This progressive tax applied not only to heirs in the direct line, but also to brothers and sisters, nephews and nieces, who were exempted from the tax on collateral relatives; and the rates were as shown below:

When the value of the entire property of the decedent—

Exceeds	$20,000	and does not	exceed	$50,000	1 per cent.
"	50,000	"	"	100,000	1½ "
"	100,000	"	"	200,000	2 "
"	200,000	"	"	300,000	3 "
"	300,000	"	"	500,000	3½ "
"	500,000	"	"	1,000,000	4 "
"	1,000,000				5 "

[1] Acts of 1906, chap. 228.

[2] Laws of 1893, p. 14.

[3] Laws of 1894, p. 169.

[4] *Ibid.*, p. 166.

While this measure was before the legislature it was so amended at the instance of its enemies that the exempted amount was not to be deducted from the value of taxable estates. Apparently this was done with a view to making the act unconstitutional; if so, the ruse was successful, for the Supreme Court of the state declared the measure unconstitutional in June, 1895, on account of the unequally operating exemption and the progressive rates.[1] The tax on collateral heirs, to which neither of these objections applied, remained in force;[2] and after an interval of nine years[3] the legislature imposed a two per cent tax on direct inheritances, in so far as they exceed $300, to take the place of the ill-fated progressive tax of 1894. This tax was made to apply to the decedent's parents, husband or wife, brothers and sisters, nieces and nephews, lineal descendants, adopted children and their descendants, sons-in-law and daughters-in-law; more distant relatives being subject to the collateral-inheritance tax of five per cent.

Active opposition to the direct-inheritance tax having developed, its repeal was made an issue in the Ohio political campaign of 1905, and the outcome led Governor Pattison to express the belief, in his message to the legislature of 1906, that it was the wish of the great majority of the people of the state that the law should be repealed. The grounds of objection to the tax were not stated; but the legislature followed his suggestion by repealing the tax on direct heirs, except as to estates in which the inventory had already been filed—a curious penalty for the prompt filing of inventories. Ohioans who favored the tax doubt whether

[1] State *vs.* Ferris, 53 Ohio State, 314. See pp. 169-172, *infra*.

[2] Hagerty *vs.* State, 55 Ohio State, 613; Annotated Revised Statutes of Ohio, 1903, §§ 2731-1 to 2731-17.

[3] Laws of 1904, p. 398.

the oposition to it was really as widespread as it was active, and predict that the tax will be reimposed, perhaps with a more generous exemption and other modifications.

The Ohio collateral-inheritance tax law offers an unusually strong inducement to prompt payments, in a discount at the rate of one per cent for each full month remaining before the expiration of a year. No commission is allowed the county treasurers for collecting the tax, but three-fourths of the necessary expenses of collection are deducted from the state's share before it is paid over; in other words, the expenses are divided in the same proportion as the proceeds.

XX. Maine

An inheritance tax was recommended by the Maine Tax Commission in 1890, and the legislature adopted the suggestion in 1893 [1] by imposing a tax of two and one-half per cent on collateral heirs; eight years later the rate was increased to four per cent.[2] Inheritances of five hundred dollars and less are exempt, and the tax is calculated only on the excess above the exempt amount. Educational and benevolent institutions were exempted by an amendment of 1895,[3] and the same favor was afterward extended to religious institutions.[4]

In the list of exempt relatives and in other details the Connecticut law of 1889 is closely followed.

XXI. California

California adopted, in 1893,[5] a five per cent collateral-inheritance tax for the benefit of the state school fund.

[1] Acts of 1893, chap. 146.
[2] Acts of 1901, chap. 225.
[3] Acts of 1895, chap. 96.
[4] Acts of 1903, chap. 156.
[5] Statutes of 1893, chap. 168.

Estates of less than five hundred dollars were exempt. The model for the California statute was the New York law as it stood before the extension of the tax to direct heirs.

Governor Pardee, in his message of January, 1905, recommended to the legislature that it give careful consideration to the question whether the application of the inheritance-tax law should be extended, first by taxing direct as well as collateral inheritances, and secondly by making the tax progressive. The legislature adopted his suggestion by practically re-enacting for California [1] the provisions of the Wisconsin inheritance-tax law. The rates are the same as in Wisconsin: that is to say, the primary rates for an inheritance not exceeding $25,000 are one per cent for direct heirs; one and one-half per cent for brothers and sisters and their descendants, sons-in-law and daughters-in-law; three per cent for uncles and aunts and their descendants; four per cent for great-uncles and great-aunts and their descendants; and five per cent for others. The primary rates are multiplied by 1½ for the excess above $25,000 in each inheritance up to $50,000; by 2 for the excess above $50,000 up to $100,000; by 2½ for the excess above $100,000 up to $500,000; and by 3 upon the excess above $500,000, thus making the maximum rate for large amounts going to strangers in blood fifteen per cent. The principal difference between the California law and its model is that the exemptions are somewhat more generous than in Wisconsin, and make a well-considered distinction between minor and adult children. In the case of a widow or minor child there is an exemption of $10,000, while the exemption allowed a surviving husband or any other direct heir is but $4000. The nearest collateral relatives are allowed an exemption of $2000 each; uncles and aunts and their

[1] Statutes of 1905, chap. 314.

descendants, $1500; great-uncles and great-aunts and their descendants, $1000, and others, $500. Bequests to charitable, benevolent, educational, and public institutions are wholly exempted. In the case of taxes paid within six months of the decedent's death, a discount of five per cent is allowed; on taxes not paid within 18 months, interest is charged. County treasurers are charged with the duty of collecting these taxes, and are allowed to retain, in addition to their other salaries or fees, three per cent of the first $50,000 accounted for each year, one and one-half per cent of the next $50,000, and one-half of one per cent on all additional sums; but any special attorneys needed for enforcing the payment of these taxes must be compensated out of this commission. The revenue from this tax up to $250,000 each year is applied to the school fund; any excess above that amount goes to the general fund of the state.

XXII. Michigan

In 1893 [1] the legislature of Michigan enacted an inheritance-tax law patterned closely after that of New York, and therefore affecting direct as well as collateral heirs. The exemption in the case of direct heirs, however, was changed from $10,000 to $5,000. This statute was declared unconstitutional,[2] as it disregarded a provision in the constitution of Michigan requiring "specific taxes" to be applied first to interest on the educational trust funds, and then to the interest and principal of the state debt.

In 1899 [3] the tax was reimposed in a form to meet the requirements of the constitution. Estates of the value of five hundred dollars or more passing to collateral heirs

[1] Public Acts of 1893, no. 205.

[2] Chambe *vs.* Judge of Probate, 100 Mich. 112.

[3] Public Acts of 1899, no. 188.

were taxed five per cent, while the decedent's parents, husband or wife, children and lineal descendants, brothers and sisters, sons-in-law, daughters-in-law, and adopted children were required to pay one per cent on personal property in so far as it exceeded $5000 in value. In 1903 [1] the exemptions were reduced to one hundred dollars for collateral heirs and $2000 for direct heirs, but were made to apply to each individual share instead of to the estate as a whole; and there is no corresponding deduction from shares which are large enough to be taxed at all.

The tax is payable to the county treasurer, who is allowed to retain a commission of one per cent. If the tax is paid within one year of the decedent's death there is a discount of five per cent. In compliance with the constitution, the proceeds are applied first in paying the interest on the primary school, university, and other educational funds, and then to paying the interest and principal of the state debt; when the state debt is extinguished, other than the amounts due to educational funds, the proceeds are to go into the primary-school interest fund.

XXIII. Missouri

In 1895 the legislature of Missouri imposed a collateral-inheritance tax of five per cent on small amounts and seven and one-half per cent on the excess above $10,000.[2] This was accompanied by an additional tax on the organization of corporations (applicable also to foreign corporations proposing to do business in the state) at the rate of twenty-five cents for each thousand dollars of capital stock. The two taxes being thus joined in one statute, the latter seemed to bear some resemblance to the tax in lieu of an

[1] Public Acts of 1903, no. 195. For recent amendments see Public Acts of 1907, nos. 155 and 328.

[2] Laws of 1895, p. 278.

inheritance tax which some countries impose upon corporations in view of their immortality; but the act provided also for a license tax on manufacturers of patent medicines, which tends to dispel the idea that the organization tax was based upon any such definite principle. One-fourth of the proceeds of all three taxes was assigned to the state "seminary fund;" the remainder was to constitute a "state university scholarship fund," to be held by the county treasurers for the benefit of the most promising needy matriculants from each county.

This law was annulled by the Supreme Court of the state,[1] mainly on the ground that the establishment of scholarships is not a public purpose for which taxes may be levied, though it was also criticised as imposing double taxation and lacking in uniformity. In the meantime the seven and one-half per cent rate had been stricken out[2] at the instance of the friends of the law, who hoped that its chances in the courts would be improved by relinquishing the progressive feature.

In 1899[3] the five per cent collateral-inheritance tax was reimposed in a form to meet the objections of the court. Under this enactment the proceeds, up to an annual amount equal to one-tenth of a mill on the dollar of the assessed valuation of the taxable property of the state, goes into the state seminary fund for the maintenance and equipment of the University of Missouri, while any excess above that amount is to go into a separate fund to be appropriated for other educational purposes. Bequests for educational, charitable, and religious purposes are exempt from taxation.

The tax is payable to the county collector of revenue, who is allowed to retain five per cent of the first $20,000 re-

[1] State *vs.* Switzler, 143 Mo. 287; 45 S. W. 245.

[2] Laws of 1897, p. 237.

[3] Laws of 1899, p. 328.

ceived each year and three per cent of any additional sum; of this commission, however, one-fifth must be paid over to the probate judge of the county to defray clerical expenses arising in his office in connection with the tax.

XXIV. Iowa

The Iowa Revenue Commission of 1892-3 included among its recommendations, and in the bill it submitted, a progressive tax on both collateral and direct heirs, ranging from five to ten per cent for the former and from one to five per cent for the latter, but allowing liberal exemptions and corresponding deductions in all cases.[1] Instead of passing this part of the bill as reported by the commission, the legislature simply imposed a proportional tax on collateral inheritances exceeding $1000 in value, at the rate of five per cent on the excess.[2] The law has since been amended [3] by the introduction of discriminating rates against non-resident aliens, who are taxed twenty per cent, except that if they are brothers or sisters of the decedent the rate is ten per cent. More recent amendments [4] have added step-children and their descendants to the list of exempt heirs, and extended the original exemption of benevolent and educational institutions to hospitals, public libraries, and public art galleries kept open to the free use of the public at least three days of each week.

XXV. Vermont

In 1896 [5] Vermont adopted a collateral-inheritance tax

[1] *Report of the Revenue Commission of the State of Iowa*, 1893, pp. 15, 43.

[2] Acts of 1896, chap. 28.

[3] Acts of 1904, chap. 51.

[4] Acts of 1906, chaps. 54, 55.

[5] Public Acts of 1896, no. 46.

of five per cent, with an exemption of $2000. In 1904[1] the law was completely revised, and the exemption of small amounts was discontinued. Heirs other than the decedent's parents, husband or wife, lineal descendants, adopted children and their descendants, sons-in-law and daughters-in-law are now required to pay five per cent in all cases. Bequests to charitable, educational, or religious societies or institutions created under the laws of Vermont and having their principal office in that state, and bequests for cemetery purposes or for the purchase or maintenance of burial lots, are exempt.

Vermont has also a system of approximately proportional probate fees. For estates the assets of which exceed $350 but do not exceed $5000 the amount is two dollars, and the fee is increased by two dollars for every further $5000 or fraction thereof.[2]

XXVI. Montana

In 1897 the Montana legislature passed an act[3] which was contradictory in its terms, but was probably intended to tax collateral inheritances five per cent, with an exemption of estates of less than $500, and direct inheritances of personal property one per cent, with an exemption in favor of estates less than $7500 in value. Forty per cent of the revenue from this source is assigned to the general school funds of the counties, and the remainder to the general fund of the state.

XXVII. Colorado

A bill modeled upon the Illinois inheritance-tax law was introduced in the Colorado legislature in 1897, and referred to the State Supreme Court for an opinion as to its con-

[1] Public Acts of 1904, no. 30. [2] Vermont Statutes, 1894, § 5373.

[3] Laws of 1897, p. 83.

stitutionality, according to the Colorado custom. The court replied that the bill was not in conflict with the provision of the state constitution requiring taxes to be uniform upon the same class of subjects, but at the same time said that the Illinois statute from which it was taken was " one of the most objectionable acts upon the subject to be found."[1] The bill passed the lower house, but went no further. In 1901, however, a very similar measure became law as part of the general revenue act adopted that year; and in 1902 it was re-enacted with some modifications.[2] The classification of relatives and the progressive scale applicable to distant relatives and strangers are the same as in the Illinois law, but near relatives are taxed somewhat more heavily; direct heirs and brothers and sisters pay two per cent on the excess above $10,000, while uncles and aunts, nephews and nieces, and their descendants pay three per cent, with no exemption beyond the five hundred dollars allowed to the remote relatives and strangers who pay from three to six per cent according to the size of the estate.

XXVIII. Nebraska

A few days before the approval of the Colorado revenue law of 1901 Nebraska adopted an inheritance tax[3] patterned even more faithfully upon the Illinois law. The only important point in which the model was not followed was the high exemption allowed immediate relatives; in Nebraska direct heirs and brothers and sisters pay one per cent on the excess above $10,000 received by each, while as in Illinois, nephews, etc., pay two per cent on the excess

[1] *In re* House Bill No. 22, 23 Colo. 492; 48 Pac. R. 535. The constitutionality of the Illinois act was in question at this time.

[2] Laws of 1901, chap 94, §§ 23-43; 1902, chap. 3, §§ 21-41.

[3] Laws of 1901, chap. 54; amended by Laws of 1905, chap. 117; 1907, chaps. 103, 104.

above $2000 received by each, and distant relatives and strangers pay from three to six per cent according to the value of the estate. The proceeds go into a special fund in each county for the permanent improvement of roads.

XXIX. Washington

The Washington law of March 6, 1901,[1] imposes a tax of one per cent on all sums above the first $10,000 passing to a decedent's parents, husband or wife, lineal descendants, adopted children or their descendants, and a progressive tax on collateral heirs at the following rates:

	First $50,000.	$50,000–$100,000.	Excess above $100,000.
	Per cent.	Per cent.	Per cent.
To and including the third degree.......	3	4½	6
Beyond the third degree...............	6	9	12

In 1905 bequests for certain charitable purposes were exempted,[2] and the administrative provisions were somewhat elaborated.[3] In 1907 non-resident alien collateral heirs were taxed twenty-five per cent.[4]

XXX. Utah

The Utah inheritance tax, which also dates from 1901,[5] is noteworthy in that it is levied at the uniform rate of five per cent upon all inheritances, direct and collateral alike, in so far as the entire estate exceeds $10,000.[6] As prop-

[1] Session Laws of 1901, chap. 55.
[2] Session Laws of 1905, chap. 93.
[3] *Ibid.*, chap. 114.
[4] Session Laws of 1907, chap. 217.
[5] Laws of 1901, chap. 62.
[6] Laws of 1903, chap. 93.

erty is usually transmitted in the direct line, this is for practical purposes heavier than the Washington tax. The law was elaborated on the administrative side in 1905,[1] but without altering its main features.

XXXI. Arkansas

Arkansas adopted in 1901 [2] a collateral-inheritance tax of the old-fashioned type, with a rate of five per cent and no exemptions except that in favor of the decedent's parents, husband or wife, lineal descendants, adopted children and their descendants. Two years later [3] the exemption was extended to include grandparents.

XXXII. Oregon

Governor Chamberlain of Oregon recommended an inheritance tax in his message of 1903, on the ground that "many, if not all the estates going through probate escape a just share of the burdens of taxation during the lifetime of the testators or intestates." The legislature promptly adopted this recommendation by imposing a tax on both direct and collateral inheritances,[4] evidently based upon the Illinois law. On property passing to the decedent's father, mother, husband, wife, child, brother, sister, son-in-law, daughter-in-law, adopted child, any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or any lineal descendant born in lawful wedlock, the rate is one per cent; estates valued at less than $10,000 are exempt, and the tax is to be levied only on the excess above $5000 received by each person. For the decedent's uncle, aunt, nephew, niece,

[1] Laws of 1905, chap. 119.

[2] Laws of 1901, chap. 156.

[3] Laws of 1903, chap. 89.

[4] General Laws of 1903, p. 49.

or any lineal descendant of the same the rate is two per cent on the excess above $2000 received by each person. In all other cases, the rates are three per cent on amounts over $500 and not exceeding $10,000, four per cent on amounts over $10,000 and not exceeding $20,000, five per cent on amounts over $20,000 and not exceeding $50,000, and six per cent on all amounts over $50,000. Benevolent and charitable institutions incorporated in Oregon and actually engaged therein in carrying out the work for which they are incorporated are exempt; and by an amendment of 1905 [1] educational institutions are equally favored.

When the tax is paid within eight months from the decedent's death a discount of five per cent is allowed; when it is not paid within that time interest is charged.

The State Treasurer, in his last biennial report, recommended cutting in two the exemption to direct heirs, estimating that this would at once double the revenue from this tax.

XXXIII. Wyoming

By an act approved February 21, 1903,[2] the Wyoming legislature imposed both a direct and a collateral-inheritance tax. On estates passing to the decedent's father, mother, husband, wife, children, brothers, sisters, sons-in-law, daughters-in-law, adopted children, any person to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent, or any lineal descendants born in lawful wedlock, the rate is two per cent on the excess above $10,000; but the decedent's husband or wife and children, if bona-fide residents of Wyoming, are not taxed unless their individual shares exceed $25,000.

[1] General Laws of 1905, chap. 178.

[2] Laws of 1903, chap. 80.

The collateral-inheritance tax is at the rate of five per cent, estates valued at less than five hundred dollars being exempt. Inheritance taxes are declared due and payable at the death of the decedent, and interest at the rate of six per cent is provided for unless they are paid within six months, in such case a discount of five per cent being allowed.

When an estate for life or for a term of years is bequeathed to the testator's father, mother, husband, wife, brother, sister, lineal descendant, son-in-law or daughter-in-law, with a remainder to a collateral heir, stranger in blood, or body politic or corporate, the life or term estate is exempt, and the tax on the remainder becomes payable immediately, though by giving bond payment may be deferred till the property is actually acquired. This exemption and the accompanying conditions and limitations can be explained only on the theory that they were copied without revision from some statute imposing a collateral-inheritance tax only.

XXXIV. North Dakota

The North Dakota act of March 10, 1903,[1] imposes a collateral-inheritance tax which is remarkable both for its low rate and for its generous exemption. Property within the jurisdiction of North Dakota passing to any person other than the decedent's father, mother, husband, wife, lineal descendants, adopted children or lineal descendants of an adopted child, except charitable, educational, or religious societies or institutions in North Dakota, is made subject to a tax of two per cent of its valuation above the sum of $25,000, after the payment of all debts; and debts are so defined as to include local and state taxes due prior

[1] Laws of 1903, chap. 171.

to the decedent's death, a reasonable sum for funeral expenses, and court costs, including costs of appraisement for the inheritance tax and the statutory fees of executors, administrators, or trustees.

XXXV. South Dakota

In imposing an inheritance tax, in 1905,[1] the South Dakota legislature divided heirs into three classes as in Illinois and Colorado, and applied progressive rates to distant relatives and strangers in blood. Direct heirs and brothers and sisters are taxed only one per cent, without regard to the amount of the inheritance, while estates of $20,000 or less passing to the widow, and $5000 each to other direct heirs, are exempt. The decedent's uncles and aunts, nephews and nieces, and their descendants are taxed two per cent, with an exemption of $500 each. More distant relatives and strangers are taxed four per cent on amounts of $10,000 or less, six per cent on the excess above $10,000 up to $20,000, eight per cent on the excess above $20,000 up to $50,000, and ten per cent on the excess above $50,000, with an exemption of one hundred dollars to each heir. A discount of five per cent is allowed when the tax is paid within one year; in other cases, interest at six per cent is charged.

XXXVI. Kentucky

The Kentucky legislature of 1906[2] imposed a five per cent collateral-inheritance tax, with an exemption of the first $500 of every estate, and a discount of five per cent if the tax is paid within nine months after the decedent's death. If the tax is not paid within eighteen months, in-

[1] Laws of 1905, chap. 54.

[2] Laws of 1906, chap. 22, art. 19.

terest at the rate of ten per cent is charged for the entire period. The tax is paid to the county sheriffs or collectors, and by them transmitted to the Auditor of Public Accounts.

XXXVII. Idaho

The Idaho law of March 16, 1907,[1] is almost a literal copy of the California inheritance-tax act of 1905, and is therefore very similar to the Wisconsin law. On inheritances not exceeding $25,000 the rates are from one to five per cent, according to relationship. Any excess above $25,000 is subject to higher rates, increasing to three times the primary rates for the excess above $500,000. The exemptions, as in California, are amounts of $10,000 transferred to the widow or a minor child, $4,000 transferred to other direct heirs, and from $2,000 down to five hundred dollars for more distant relatives; also bequests to societies, corporations and institutions exempt by law from taxation, or for benevolent, educational or public purposes.

XXXVIII. Texas

The Texas legislature, at the special session of 1907,[2] imposed a progressive inheritance tax of from two to twelve per cent on collateral heirs. The rate of progression, though very regular throughout, is more rapid for distant than for immediate relatives. The scale is shown below:

	Exemption.	Up to $10,000	$10,000 to $25,000	$25,000 to $50,000	$50,000 to $100,000	$100,000 to $500,000	Excess above $500,000
Lineal ascendants, brothers and sisters and their descendants.	$2,000	2	2½	3	3½	4	5
Uncles and aunts and their descendants	1,000	3	4	5	6	7	8
Others	500	4	5½	7	8½	10	12

[1] General Laws of 1907, p. 558.

[2] General Laws of 1907, called session, chap. 21.

Each rate of the progressive scale applies only to its respective fraction of the inheritance. The decedent's father and mother, husband or wife, and lineal descendants are exempt, as are also bequests for charitable, educational, or religious purposes to be carried out within Texas by domestic corporations. Payment is to be made to the county collectors of taxes, who are allowed one per cent of the amount as their compensation.

XXXIX. Hawaii

At the time of its annexation, Hawaii had a collateral-inheritance tax of five per cent, introduced in 1892.[1] In 1905 the tax was extended to direct heirs, who are required to pay two per cent of the value in excess of $1,000 received by each. The rate for collateral heirs remains five per cent, and is applicable to the excess above five hundred dollars in each case. If the tax is paid within six months from the death of the decedent a discount of five per cent is allowed. Bequests for charitable, benevolent, educational, and public purposes are exempt.[2]

XL. Porto Rico

Porto Rico had a progressive inheritance tax under the Spanish *régime*, and the Hollander Act of 1901 [3] provides for a similar tax. It is difficult to tell from the language of the act whether the tax was intended to apply to direct heirs or not; but the insular Attorney-General decided that the tax was due from children on the death of the mother, though not on the death of the father.[4] The widow is clearly exempt, but the surviving husband is taxed. The

[1] Revised Laws of Hawaii, 1905, chap. 100.

[2] Laws of 1905, Act 102.

[3] Laws of 1901, p. 43.

[4] Opinions of the Attorney-General of Porto Rico, i, 35.

rates are as follows, the first two hundred dollars of each inheritance being exempt:

	$5,000 or less.	$5,000–$20,000.	$20,000–$50,000.	Excess above $50,000.
	Per cent.	Per cent.	Per cent.	Per cent.
Husband and lineal descendants (from mother).......	1	1½	2	3
All others..................	3	4½	6	9

XLI. Summary

Inheritances are now taxed to a greater or less extent in thirty-six states of the Union, and in Hawaii and Porto Rico. Twenty states of the Union tax both direct and collateral heirs; and in thirteen states the inheritance tax is in some degree progressive. Wisconsin, California, Idaho, Minnesota, and Massachusetts have progressive rates for both direct and collateral heirs; in Illinois, Colorado, Nebraska, South Dakota, Oregon, and North Carolina the progressive rates apply only to distant relatives and strangers in blood, while in Washington and Texas they apply to all collateral heirs. Minnesota and Utah make no distinction between direct and collateral heirs; in all other cases in which direct heirs are taxed at all the rates are much lower and the exemption (except in Connecticut and North Carolina) much larger than for collateral heirs. It may be added that the new constitution of Oklahoma expressly authorizes progressive taxation of both direct and collateral inheritances. The following tabular statement shows the main provisions of the state laws on this subject:

MAIN PROVISIONS OF AMERICAN INHERITANCE-TAX LAWS.

STATE.	Collateral.		Direct.	
	Rates.	Exemption.	Rates.	Exemption.
	Per cent.		Per cent.	
Arkansas	5			
California	1½–15	$500–2,000	1–3	[1]$4,000
Colorado	3–6	500	2	10,000
Connecticut	3	10,000	½	10,000
Delaware[2]	5	500		
Idaho	1½–15	500–2,000	1–3	[1]4,000
Illinois	2–6	500–2,000	1	20,000
Iowa	5	1,000		
Kentucky	5	500		
Louisiana[3]	5		2	10,000
Maine	4	500		
Maryland	2½	500		
Massachusetts	3–5	1,000	1–2	10,000
Michigan	5	100	[4]1	2,000
Minnesota	1½–5	10,000	1½–5	10,000
Missouri	5			
Montana	5	500	[4]1	7,500
Nebraska	2–6	500–2,000	1	10,000
New Hampshire	5			
New Jersey	5	500		
New York	5	500	1	10,000
North Carolina	1½–15	2,000	¾	2,000
North Dakota	2	25,000		
Ohio	5	200		
Oregon	2–6	500–2,000	1	[5]5,000
Pennsylvania	5	250		
South Dakota	2–10	100–500	1	5,000
Tennessee	5	250		
Texas	2–12	500–2,000		
Utah	5	10,000	5	10,000
Vermont	5			
Virginia	5			
Washington	3–12		1	10,000
West Virginia	3–7½		1	20,000
Wisconsin	1½–15	100–500	1–3	[1]2,000
Wyoming	5	500	2	[6]10,000

[1] Widows and (except in Wisconsin) minor children taxable only on the excess above $10,000 received by each.

[2] Tax payable only by strangers in blood.

[3] Tax not payable when the property bore its just proportion of taxes prior to the owner's death.

[4] Applies to personal property only.

[5] Decedents' estates of less than $10,000 are also exempt.

[6] For the surviving husband or wife and children, if residents of Wyoming, $25,000.

XLII. Administration

In their administrative provisions some of the state inheritance-tax laws are much more elaborate than others, but there is a general similarity in the essential features. The probate courts nominally determine the amount of tax due from each estate, but the actual assessment is usually made by one or more appraisers appointed by the court. Where the only shares taxable are pecuniary legacies, as often happens in the case of a collateral-inheritance tax merely, the appointment of appraisers is unnecessary. In New York, especially in New York City, the appointment of an appraiser for each estate was found to lead to serious abuses and unnecessary expense. Although (or perhaps because) the appraisers' fees were but three dollars a day, it became customary to delay the appraisement unnecessarily, and to charge for each day of the delay.[1] In 1899 a committee of the Assembly appointed to investigate this and other matters in connection with the surrogates' courts of New York County found that in one year one man had devoted 5,395 days to his duties as appraiser. As a result of this committee's disclosures, salaried appraisers were promptly provided for in New York, Kings, and Erie Counties,[2] and a year later[3] the salary system was extended to eleven of the other more populous counties, while in the remaining forty-seven counties the duty of appraising estates was imposed upon the county treasurers. By these changes the expense of collecting the inheritance tax was reduced from 12.2 per cent in 1899 to 6.4 per cent in 1902.

In some states the tax is payable to the county treasurers or collectors (to the registers of wills in Pennsylvania and Maryland), in other cases directly to the state treasury. In

[1] *Cf.* Carter, *The Transfer Tax Law of the State of New York*, p. 93.

[2] Laws of 1900, chap. 658. [3] Laws of 1901, chaps. 173 and 493.

New York it is payable to the State Comptroller in counties having salaried appraisers, and in other cases to the county treasurer, who is permitted to retain a fee or commission of five per cent on the first $50,000 accounted for each year, three per cent on the second $50,000, and one per cent on any additional sum. Similar commissions are allowed in several other states. When payment is made to the county treasurer, duplicate receipts are issued, one of which must be countersigned by the State Auditor or Comptroller before it will be received in settlement of the executor's or administrator's accounts; this is in order that the county officer may be debited with the amount collected. Probate judges or clerks are also required to report at intervals on the estates which have come before them; but as they are sometimes negligent in this regard, it has been found well worth while to have their records examined from time to time by special agents.

Executors and administrators are made personally liable for the payment of the tax, which they are authorized to deduct from individual legacies, or collect from the legatees in the case of specific legacies. They are also empowered to sell as much of the decedent's property as may be necessary in order to pay the tax. Moreover, the tax is made a lien upon the property until paid; though Maryland has recently limited the lien to four years,[1] in order to avoid clouding titles indefinitely, and five-year limits are found in some other states. District attorneys may be called upon to sue for any tax not paid within a reasonable time, and in some cases special attorneys may be employed. In some states the probate courts are authorized to cite delinquents to appear and show cause why the tax should not be paid.

[1] Laws of 1904, chap. 222.

CHAPTER VIII

LEGAL THEORIES

I. Constitutionality, Nature, and Subject of the Tax

The constitutionality of the inheritance tax has been repeatedly tested in the courts, and has usually been sustained. Particular inheritance-tax acts have been declared unconstitutional in several instances, but nearly always because of some specific defect, and not because they were unsound in principle. The early statutes of Minnesota and Wisconsin, which were annulled by the courts, imposed probate duties rather than inheritance taxes proper, and made payment a condition precedent to the settlement of the estate. In both cases the state claimed that the exaction was a fee, but the courts held it to be a tax. The Minnesota Supreme Court held that the act violated a clause in the bill of rights to the effect that every person "ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay, conformably to the laws." Said the court:

> Suitors in this (probate) court of exclusive jurisdiction should not be required to pay, as a condition to their suits being entertained, a tax measured by the value of the property, and without regard to the nature or extent of the judicial proceedings which may be invoked or become necessary.

Moreover, it was held that the act violated the rule of

equality of taxation by the exemption of small estates and by an arbitrary and unequal schedule.[1]

In the Wisconsin case the tax was declared unconstitutional primarily because it applied only to one county; yet the court intimated that it might have been nullified either as a tax on judicial procedure, as double taxation, or as unequal because of the exemption of small estates. The court distinguished between this tax, which it regarded as a tax upon the property constituting the estate, and a succession tax upon the transmission of the property.[2]

The more recent Minnesota statutes which have been found wanting clearly violated the exacting provisions of the constitutional amendment permitting an inheritance tax;[3] while in Michigan and Missouri the original acts failed to observe the constitutional requirements relative to the application of the proceeds.[4] New Hampshire is the only state in which an inheritance tax has been declared unconstitutional for reasons which might apply to such taxes in general.[5] Justice Blodgett, in delivering the opinion of the court, conceded that in the absence of constitutional prohibition the legislature would have had power to impose the tax, but held that the exemption of certain relatives and the taxation of all others violated two provisions of the state constitution: that which limited the power of levying taxes to "proportional and reasonable assessments, rates, and taxes upon all the inhabitants and residents within the said state, and upon the estates within the same," and the clause of the bill of rights declaring every inhabitant to be bound to contribute his share. He considered it im-

[1] State *vs.* Gorman, 40 Minn. 232; 41 N. W. 948. See p. 119, *supra*.

[2] State *vs.* Mann, 76 Wis. 469; 45 N. W. Rep. 526. See p. 116, *supra*.

[3] See pp. 120-122, *supra*.

[4] See pp. 139, 141, *supra*.

[5] Curry *vs.* Spencer, 61 N. H. 624.

material whether the tax was on property or on a civil right or privilege, for the same principle of equality and due proportion applied to every species of tax. In this respect he distinguished between the New Hampshire constitution and those of Virginia and Maryland, under which the inheritance tax had been sustained, saying that the latter required only taxes on property to be uniform. The decision continues:

> If it is to be regarded as a tax on property, it is open to the objection of unequal and double taxation, and if it is to be regarded as a tax on a civil right or privilege, it is discriminating and disproportional. Nor is the argument that its object is "to defray the cost of probate courts" entitled to any weight, because the constitutional rule of equality cannot be limited or qualified by any consideration of expediency or convenience. The purpose of the act cannot change its character in this respect. Good purposes in taxation are of no consequence if the effect is to subject the taxpayer to exceptional and invidious exactions. . . . Under the reservations of the bill of rights and the limitations of the constitution, it is plainly founded upon pure inequality, and is simply extortion in the name of taxation; and it can therefore never be sustained in this jurisdiction so long as equality and justice continue to be the basis of constitutional taxation.

The distinction made in this decision between the constitution of New Hampshire and those of Virginia and Maryland was one which existed only in the imagination of the New Hampshire judge; the rule of uniformity had been limited to the property tax in Maryland and Virginia only by the interpretation of the courts. The language of the constitutions was rather more explicit than in New Hampshire. The Maryland constitution declared

that paupers ought not to be assessed for the support of the government, but every other person in the state, or person holding property therein, ought to contribute his proportion of public taxes for the support of government, according to his actual worth in real or personal property; yet fines, duties or taxes may properly and justly be imposed or laid, with a political view, for the good government and benefit of the community.[1]

The Virginia constitution prescribed as follows:

Taxation shall be equal and uniform throughout the Commonwealth, and all property other than slaves shall be taxed in proportion to its value, which shall be ascertained in such manner as may be prescribed by law.[2]

The Virginia court stated in so many words that the language used was broad enough to cover everything; yet it was held not to invalidate a tax on a civil right or privilege, like the inheritance tax.[3] Judge Lee, in delivering the opinion of the court, said:

I do not perceive wherein the inequality and want of uniformity complained of can be said to consist. . . . The tax is equal and uniform throughout the state as far as it is susceptible of the application of the rule. It is the same everywhere upon the succession to estates of equal value of whatever subjects they may consist.

Nor was the exemption of small estates considered a violation of the rule of uniformity:

The legislature may define the class to which this tax shall be restricted as they in their discretion may think just and

[1] Constitutions of 1864 and 1867, Declaration of Rights, art. 15.

[2] Constitution of 1851, art. iv, § 22.

[3] Eyre *vs.* Jacob, 1858, 14 Grat. 422.

proper, taking care to render it uniform with all those who constitute the class; or as they are authorized to exempt any particular subject from taxation, it may be regarded as an exemption in favor of those entitled to inconsiderable estates of less value than the sum named.

In like manner the Maryland Court of Appeals decided that while providing for a uniform mode of taxation on property, it was not the purpose of the framers of the constitution to prohibit any other species of taxation.[1]

In North Carolina, also, the Supreme Court denied that the inheritance tax violated the constitutional provision requiring all property to be taxed uniformly, and limiting the rate of state taxation.[2] Said the court:

Undoubtedly if the tax in question must necessarily be regarded as a tax on property, the objection would be irresistible, since this property is not only taxed uniformly with other property, but is subjected to taxation as a legacy in addition. But we do not regard the tax in question as a tax on property, but rather as a tax imposed on the succession, on the right of the legatee to take under the will, or of a collateral distribution in the case of intestacy. . . . Is there any reason why the State shall be denied the power to tax a succession whether it be by gift *inter vivos*, or by will or intestacy? Property itself as well as the succession to it is the creature of positive law. The legislative power declares what objects in nature may be held as property; it provides by what forms and on what conditions it may be transmitted from one person to another; it confines the right of inheriting to certain persons whom it defines heirs, and on the failure of such it takes the property to the State as an escheat.

The right to give or take property is not one of those natural and inalienable rights which are supposed to precede all gov-

[1] Tyson *vs.* State, 1868, 28 Md. 577.

[2] Pullen *vs.* Commissioners, 66 N. C. 361.

ernment, and which no government can rightfully impair. There was a time, at least as to gift by will, it did not exist; and there may be a time again when it will seem wise and expedient to deny it. These are the uncontested powers of the Legislature upon which no article of the Constitution has laid its hands to impair them. If the Legislature may destroy this right, may it not regulate it? May it not impose conditions upon its exercise? And the condition it has imposed in this case is a tax.

In these remarks on the legislative power over the right of bequest the North Carolina court followed that of Virginia, which had declared in *Eyre vs. Jacob* that the right to take property by devise or descent being the creature of the law, the legislature might restrict it, impose conditions upon it, or absolutely repeal the statutes of wills and descents and apply the property of decedents to public uses.

The constitutionality of the New York tax was upheld by the Court of Appeals in 1887.[1] It had been argued against it that bequest and inheritance were purely natural and absolute rights, and not specially taxable; that the tax was not equal and uniform, but arbitrary, unjustly discriminating between citizens; that the law did not distinctly state the object to which the tax was to be applied; that it did not provide for a legal apportionment of the tax; that it conferred upon the surrogates powers and duties not authorized by the constitution; that due process of law was wanting in that the tax-payers were not given sufficient notice or opportunity to be heard; and that the provision for the taxation of future and contingent estates was oppressive and unconstitutional.

In this case it was not determined whether the tax in question was a tax on property or on the devolution of property:

[1] Matter of McPherson, 104 N. Y. 306.

In either case it is a special tax. In the one case it is a tax upon the particular class of property, and in the other case a tax upon succession or devolution of property, or the right to receive property in the cases mentioned in the statute. Whether it be one or the other, it is free from constitutional objection. It has never been questioned that the legislature can impose a tax upon all sales of property, upon all incomes, upon all acquisitions of property, upon all business and upon all transfers. Taxes of a similar character were quite extensively imposed by the acts of Congress passed during the late civil war. If this be regarded as a tax upon property, then it is free from constitutional objection if it be equally imposed and properly apportioned upon all the property of the class to which it belongs.

The general rule regarding the nature and sanction of inheritance taxes is well stated by the Supreme Court of Tennessee in sustaining the inheritance tax of that state:

Upon general principles, the right to tax the succession or inheritance of property is founded on a reasonable basis, since the right of any person to succeed to property of a deceased person, whether by will or inheritance, is a creature of statute law. . . . As the right to succeed depends upon the law of the state, it follows that the state may regulate that right as public necessity or policy may dictate, and may subject it to such burdens and reasonable conditions as may best subserve the purposes of the state. It must be borne in mind that the tax is not upon the property, but the right or privilege of acquiring it by succession.[1]

[1] State *vs.* Alston, 94 Tenn. 674; 30 S. W. 750. See also State *vs.* Hamlin, 86 Me. 495; Gelsthorpe *vs.* Furnell, 20 Mont. 299; *In re* Wilmerding, 117 Cal. 281; State *vs.* Clark, 30 Wash. 439; Union Trust Co. *vs.* Probate Judge, 125 Mich. 487; Estate of Magnes, 32 Colo. 527; State *vs.* Vinsonhaler (Neb.), 105 N. W. 472; Morris' Estate, 138 N. C. 259; Hickok's Estate, 78 Vt. 259.

The Supreme Court of Wisconsin, in sustaining the Wisconsin act of 1903, follows the Supreme Court of Massachusetts in rejecting the theory that the legislature might abolish inheritance and bequest, but justifies the taxation of inheritances " under the power of reasonable regulation and taxation of transfers of property: [1]

But, while we utterly reject the doctrine of *Eyre v. Jacob*, 14 Grat. 422, and hold that the right to demand that property pass by inheritance or will is an inherent right subject only to reasonable regulation by the legislature, we are not thereby brought to the conclusion that inheritance or succession taxes cannot be levied. They do not depend upon the right to confiscate. We agree entirely with the ideas expressed by the supreme court of Massachusetts in *Minot v. Winthrop*, 162 Mass. 113, 38 N. E. 512, where it is said: " We assume that under the constitution this (*i. e.*, the taking of all property by the state on the death of the owner) cannot be done either directly or indirectly; that the legislature cannot so far restrict the right to transmit property by will or by descent as to amount to an appropriation of property generally; that it cannot impose a tax which shall be equivalent or almost equivalent to the value of the property, and cannot so limit the persons who can take as heirs, devisees, distributees, or legatees that the great mass of all the property of the inhabitants must become vested in the commonwealth by escheat. The state can take property by taxation only for the public service, and we assume that its right to take property, if any exists, by regulating the distribution of it on the death of the owner is limited in the same manner, and that this right must be exercised in a reasonable way." . . . No one doubts for a moment that a government may levy a tax upon transfers of land or upon business transactions; it is done by the federal government in this country whenever additional and extraordinary revenues are needed, in the form of stamp duties. These taxes are not based upon the power to interdict or prohibit such trans-

[1] Nunnemacher *vs.* State, 129 Wis. 190; 108 N. W. 627.

actions, but upon the power to reasonably regulate and tax them. Succession or inheritance taxes may well be sustained upon the same principle; not upon the power to prohibit, but upon the power to reasonably regulate and tax.

The distinction is perhaps chiefly of academic interest, but the question has been argued by eminent counsel before the Supreme Court of the United States,[1] and might become of practical importance if any state should impose a really excessive inheritance tax.

The Louisiana tax upon foreign heirs was sustained by the United States Supreme Court as a regulation of inheritance.[2] The opinion of the court was delivered by Chief Justice Taney, who said:

The law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and term upon which property, real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every state or nation may unquestionably refuse to allow an alien to take either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the state. . . . And if a state may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy.

The levying of a succession tax by the general government manifestly could not be explained as a regulation of inheritance; when the Civil War succession tax came before the Supreme Court it was interpreted as an exercise of the taxing power:[3]

It is plainly an excise tax or duty, authorized by section

[1] See p. 174, *infra*.

[2] Mager *vs*. Grima, 8 How. 490.

[3] Scholey *vs*. Rew, 23 Wall. 331.

eight of article one, which vests the power in Congress to lay and collect taxes, duties, imposts, and excises.

It was held not to be a direct tax within the meaning of the Constitution, nor a tax on the land itself:

> The succession or devolution of the real estate is the subject-matter of the tax or duty, or, in other words, it is the right to become the successor of real estate upon the death of the predecessor; . . . nor is the question affected in the least by the fact that the tax or duty is made a lien upon the land, as the lien is merely an appropriate regulation to secure the collection of the exaction.

The only constitutional question before the court in this case was whether the succession tax was a direct tax or an excise; but the Federal inheritance tax imposed in 1898 was attacked on more fundamental grounds, eminent counsel arguing that as the power to regulate succession was lodged solely in the states, Congress was without authority to tax the transmission or receipt of property at death. The Supreme Court, however, denied that the state's power of regulation was what was taxed:

> But the fallacy which underlies the proposition contended for is the assumption that the tax on the transmission or receipt of property occasioned by death is imposed on the exclusive power of the State to regulate the devolution of property upon death. The thing forming the universal subject of taxation upon which inheritance and legacy taxes rest is the transmission or receipt, and not the right existing to regulate. In legal effect, then, the proposition upon which the argument rests is that wherever a right is subject to exclusive regulation, by either the government of the United States on the one hand or the several States on the other, the exercise of such rights as regulated can alone be taxed by the government having the mission to regulate. But when it is accurately

stated, the proposition denies the authority of the States to tax objects which are confessedly within the reach of their taxing power, and also excludes the National government from almost every subject of direct and many acknowledged objects of indirect taxation. Thus imports are exclusively within the taxing power of Congress. Can it be said that the property when imported and commingled with the goods of the State cannot be taxed, because it had been at some prior time the subject of exclusive regulation by Congress? Again, interstate commerce is often within the exclusive regulating power of Congress. Can it be asserted that the property of all persons or corporations engaged in such commerce is not the subject of taxation by the several States, because Congress may regulate interstate commerce? Conveyances, mortgages, leases, pledges, and, indeed, all property and the contracts which arise from its ownership, are subject more or less to state regulation, exclusive in its nature. If the proposition here contended for be sound, such property or dealings in relation thereto cannot be taxed by Congress, even in the form of a stamp duty. It cannot be doubted that the argument, when reduced to its essence, demonstrates its own unsoundness, since it leads to the necessary conclusion that both the National and state governments are divested of those powers of taxation which from the foundation of the government admittedly have belonged to them. Certainly, a tax placed upon an inheritance or legacy diminishes, to the extent of the tax, the value of the right to inherit or receive, but this is a burden cast upon the recipient and not upon the power of the State to regulate. . . . Under our constitutional system both the National and state governments, moving in their respective orbits, have a common authority to tax many and diverse objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the powers of government of the other, for if it did there would practically be an end of the dual system of government which the Constitution established.[1]

[1] Knowlton *vs.* Moore, 178 U. S. 41, 59, 60.

As regards the character of inheritance taxes the Supreme Court of Pennsylvania is at variance with all the other authorities. In one case the fact that the tax was a lien on real estate was made the basis for the opinion that it was a tax upon the property itself, a direct tax upon the thing devised.[1] But although the point was argued by counsel, this opinion was not essential to the decision of the case, and it is therefore to be regarded as dictum; though it was followed by the same court in its opinion annulling the direct-inheritance tax.[2] Of the statute declared unconstitutional in that case the court said:

> That it is an act imposing taxes on the personal property therein specified is too plain for discussion. To hold otherwise would be a perversion of the plain meaning of the words employed.

The better and more authoritative view, however, is that which regards the tax as a condition of inheritance, or a tax on a civil privilege, and not on the property transferred. An important consequence of the prevailing view on this point is that the tax is payable upon the devolution of government bonds. The Pennsylvania Supreme Court arrived at this conclusion by the following argument, many years before expressing the seemingly inconsistent views quoted above:

> This five per cent tax is one of the conditions of administration, and to deny the right of the state to impose it, is to deny the right of the state to regulate the administration of decedents' goods. . . . The act operates on the *residue* of the estate after paying debts and charges, and, theoretically, that residue is always a balance in money. The administration-

[1] Bittinger's Estate, 129 Pa. 338. [2] Cope's Estate, 191 Pa. 1.

account always exhibits a balance in cash, not in specific goods, whether bonds or horses; and though an heir may take bonds or horses as cash, the account must show, and always does show, a cash balance. That is the fund taxed by this law, and not the bond or other chattels which may have produced the fund.[1]

In New York a United States circuit court came to the same conclusion, declaring that

> the tax is not imposed upon the bonds, but is one upon the privilege of acquiring property by inheritance. . . . The bonds are the subject of the appraisal, but the privilege is the subject of the tax.[2]

The United States Supreme Court has confirmed these decisions, even holding that government bonds are subject to inheritance taxes, state [3] and Federal,[4] notwithstanding clauses in the statutes and on the face of the bonds declaring them exempt from " all taxes or duties of the United States, as well as from taxation in any form by or under state, municipal or local authority." State and municipal bonds are also subject to inheritance taxes, though exempt from other taxation.[5]

Another interesting corollary of the same or a very similar principle is that a state may even tax bequests to the United States. William W. Merriam, a resident of Suffolk County, New York, having bequeathed all his estate to the United States government, the Supreme Court of the United States held that, the New York inheritance tax being not upon the property but upon the right to dispose of it,

[1] Strode *vs.* Commonwealth, 52 Pa. 181.

[2] Wallace *vs.* Myers, 38 Fed. Rep. 184.

[3] Plummer *vs.* Coler, 178 U. S. 115.

[4] Murdock *vs.* Ward, 178 U. S. 139.

[5] Orr *vs.* Gilman, 183 U. S. 278, 289; Succession of Kohn, 115 La. 71.

the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it.[1]

In like manner, the National inheritance tax was declared applicable to legacies to states or their municipalities.[2]

Whether an inheritance tax will be regarded as a tax on the right of testators to dispose of their property by will or a tax on the right of heirs to receive property by will or inheritance will depend to some extent upon the provisions of the particular statute,[3] though the latter explanation is the one usually preferred by the courts.[4]

With regard to the general nature of the inheritance tax three legal questions may be said to be fairly well settled: (1) Such a tax is not prohibited by constitutional requirements of equality and uniformity of taxation; (2) it may be imposed as an exercise either of the taxing power or of the power to regulate inheritance, and hence by either National or state governments, or by both; (3) it is not a tax on the property transferred.

II. Legality of Progressive Rates

Whether an inheritance tax may be levied according to a progressive scale is a question that has been answered differently in different states. The Ohio direct-inheritance tax of 1894 was declared unconstitutional by the Supreme Court of that state, partly by reason of the progressive schedule. The chief contention of counsel in opposition

[1] United States *vs.* Perkins, 163 U. S. 625.

[2] Snyder *vs.* Bettman, 190 U. S. 49.

[3] Minot *vs.* Winthrop, 162 Mass. 113.

[4] State *vs.* Alston, 94 Tenn. 674; Gelsthorpe *vs.* Furnell, 20 Mont. 299.

to the tax was that it was a tax on property, and hence in violation of a constitutional provision directing that laws should be passed taxing by a uniform rule all property according to its true value in money. The court held that the tax was not one on property, but was on the right or privilege of succession, and hence was not inconsistent with the above-mentioned clause of the constitution; but both the progressive scale and the exemption of $20,000 were held to be in conflict with the following section of the bill of rights:

All political power is inherent in the people. Government is instituted for their equal protection and benefit.

These political generalities seem at first sight so irrelevant to the question at issue that it is interesting to follow the reasoning of the court:

If government is instituted for the equal protection and benefit of the people, it follows that laws which are passed under a government so instituted must likewise be for the equal protection and benefit of the people. This statute fails to protect equally the people who exercise the right and privilege of receiving or succeeding to property. The right to receive the first twenty thousand dollars of an estate not exceeding that sum is protected from taxation, while the right to receive the first twenty thousand dollars of an estate exceeding that sum is taxed the sum of two hundred dollars. This is not equal protection. Again, the right to receive fifty thousand dollars' worth of property of an estate not exceeding that sum is taxed five hundred dollars, while the right to receive fifty thousand dollars of an estate exceeding that sum is [taxed] seven hundred and fifty dollars. This is not equal protection. The same may be said of the other gradations provided for in the statute.

The right or privilege of receiving or succeeding to property is valuable in proportion to the value of the thing received. It cannot be consistently said that the right to receive twenty

thousand dollars is of no value, and that the right to receive twenty thousand and one dollars is of the value of two hundred dollars and one cent.

Again, he who uses the right or privilege of receiving property of the value of twenty thousand and one dollars, and pays therefor a tax of two hundred dollars and one cent, is not equally benefited for the tax paid, as he who uses the same right or privilege of receiving property of the value of twenty thousand dollars, without paying any tax whatever for the use of such right. The exemption of twenty thousand dollars and the increase of the per cent as the value of the estate increases renders this statute unconstitutional.

Our constitution requires equality in our tax laws, and also equality in their execution as near as may be. The only exemption allowed, as to taxation of property, is personal property to the amount of two hundred dollars to each individual, and certain other property devoted to public or charitable uses. Two hundred dollars in value to each individual is the extent to which the legislature has the power to exempt personal property from taxation. The constitution must be regarded as consistent with itself throughout, and as section 2, of article 12, permits an exemption from taxation of personal property not exceeding two hundred dollars, a construction of section 2 of the bill of rights is thereby evinced to the effect that in the taxation of subjects other than property, an exemption up to two hundred dollars in value would be regarded as for the equal protection and benefit of the people. The exemption must be equally for all, and the rate per cent must be the same on all estates. There can be no discrimination in favor of the rich or poor.[1]

The court declined to discuss the provisions of the Fourteenth Amendment to the Federal constitution in this connection, saying that they were no broader than the section of the state bill of rights above quoted. It will be

[1] State *vs.* Ferris, 53 O. St. 314.

noticed that the court emphasized the inequalities resulting from the particular mode of exemption and progression under consideration, rather than the inequality of progressive taxation in general. If the first $20,000 of every estate had been exempt, if the next $30,000 had been always subjected to the lowest rate, if the next higher rate had been applied only to the excess above $50,000, and so on throughout the scale, not only would the tax have been much more equitable, but it might also have run the gauntlet of the courts in safety. To be sure, the court added that "the rate per cent must be the same on all estates," and even suggested that the constitutional requirements concerning property taxes were applicable to the matter of exemption, although it had refused to apply them to the matter of uniformity, and had expressly said "it is *property* and not *franchises* that cannot be exempted;" but these dicta were not necessary to the decision of the case, and must be regarded as *obiter.*

The inheritance tax of Illinois, though its progressive scale was open to the same objection as in Ohio, was sustained by the Supreme Court of the state, with but one dissenting vote among seven justices, as an exercise of the legislature's powers of regulation of inheritance and of classification for purposes of taxation. On the first point the court said:

> The right to inherit and the right to devise being dependent on the legislative acts, there is nothing in the constitution of this state which prohibits a change of those subjects at the discretion of the law-making power. The law of descent and devise being the creation of the statute law, the power which creates may regulate, and may impose conditions or burdens on a right of succession to the ownership of property to which there has ceased to be an owner because of death, and the ownership of which the state then provides for by the law of

descent or devise. The imposition of such a condition or burden is not a tax upon the property itself, but on the right of succession thereto. To deny the right of the state to impose such a burden or condition is to deny the right of the state to regulate the administration of a decedent's estate.[1]

But it was claimed in opposition to the law that it conflicted with a provision of the state constitution declaring that "the general assembly shall have power to tax . . . persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates." As to this the court said:

That statute provides that certain classes of property which were a part of an estate shall be exempt from taxation under these provisions, and when the legislature provides other classes of property, some of which shall pay $1 per $100, others $2, others $3, and others $4, and still others $5, and again others $6 per $100, six different classes are created, under and by which a tax is levied by valuation on the right of succession to a separate class of property. . . . . The broad principle presented is that the legislature may create new classes of property with reference to estates, under which they may regulate the right to inherit or devise, or take under devise.

The constitutionality of the tax was called in question also in two cases tried in the Circuit Court of the United States for the Northern District of Illinois, and this tribunal followed the State Supreme Court in refusing to declare the act unconstitutional. All three of these cases were taken together to the United States Supreme Court for a final determination of the question whether the act was in violation of the Fourteenth Amendment to the Federal constitution. It was claimed that by this act, with

[1] Kochersperger *vs.* Drake, 167 Ill. 122.

its progressive rates and unusually large exemptions, the State of Illinois denied to persons within its jurisdiction the equal protection of the laws, deprived persons of property without due process of law, and abridged the privileges and immunities of citizens of the United States. The case against the tax was ably argued by Mr. William D. Guthrie, of New York City, and by ex-President Harrison. The arguments in support of the law were by Mr. Edward C. Akin, Attorney-General of Illinois, and Mr. T. A. Moran.

Mr. Guthrie urged the injustice, arbitrary character, and bad public policy of progressive taxation, and said: "If the legislatures are free to impose progressive taxes, the security of property is gone. Concede the principle of progression, and there is no limit to the injustice a legislature may commit upon the minority."

Mr. Harrison's argument was less convincing than his colleague's. His was a difficult task, for he undertook to establish two propositions in the face of repeated opinions, both of state courts and of the tribunal before which he was arguing. These points were: (1) That the tax in question was a property tax rather than a tax on the privilege of inheritance, and (2) that the rights of inheritance and of testamentary disposition were natural rights not proceeding from the legislature, and beyond the power of the legislature to take away. "When they cease to be recognized as natural and fundamental rights," he said at the close of his peroration, "we shall have dissolved the basis on which society rests." The Supreme Court had within two years expressed the contrary opinions on both these points, even deciding that a state could tax a legacy to the United States because the tax was a limitation of the testamentary power and not a tax on property.[1] The

[1] United States *vs.* Perkins, 163 U. S. 625.

court in its opinion[1] cited this decision and many others of similar purport, without manifesting any inclination to reverse them; but a determination of these points was not strictly necessary to the decision of the case. The real basis of the decision was simply the principle that progressive taxation and generous exemptions are not in violation of the rule of equality in the Fourteenth Amendment. Said the court:

> That rule does not require, as we have seen, exact equality of taxation. It only requires that the law imposing it shall operate on all alike under the same circumstances. The tax is not on money; it is on the right to inherit; and hence a condition of inheritance, and it may be graded according to the value of that inheritance. The condition is not arbitrary because it is determined by that value; it is not unequal in operation because it does not levy the same percentage on every dollar; does not fail to treat "all alike under like circumstances and conditions, both in the privilege conferred and the liabilities imposed."[2]

The opinion was delivered by Mr. Justice McKenna on April 25, 1898, and was among the first Supreme Court opinions from his pen. There was but one dissent from the opinion of the majority, and that, curiously enough, was by Mr. Justice Brewer, who was known to have expressed himself in favor of graduated inheritance taxes, as tending to prevent undue accumulation of property.[3] But this, he said in effect, was not a question of political economy, but of constitutional limitations.

[1] Magoun *vs.* Illinois Trust and Savings Bank, 170 U. S. 283.

[2] The words in quotation marks are from Hayes *vs.* Missouri, 120 U. S. 68.

[3] Dos Passos, *Law of Collateral and Direct Inheritance, Legacy and Succession Taxes*, p. 2.

The importance of the Supreme Court's decision in the Illinois case lies partly in the fact that the same line of reasoning would apply to progressive taxation in general, whether of property, income, or the gross or net receipts of corporations. It is settled that progressive taxation is not a denial of the equal protection of the laws; and hereafter no state court can well annul a progressive tax because of some vague generality in the state bill of rights. This is recognized by the Wisconsin Supreme Court in its recent decision upholding the progressive inheritance tax imposed in 1903:

> The decision of the supreme court of the United States as to the force of the XIVth amendment is necessarily conclusive, and as the general equality guaranties of our own constitution are substantially the equivalent of the equal protection of the laws guaranteed by the XIVth amendment, we are content to follow the decisions of the United States supreme court, and hold that the progressive feature does not violate the constitution.[1]

III. The Law of Exemption

It would appear that legislatures are more apt to violate constitutional rules regarding equality in granting and withholding exemptions than in establishing progressive schedules of taxation. It will be remembered that the Ohio Supreme Court's first objection to the direct-inheritance tax of that state was concerned with the injustice resulting from the exemption of $20,000, which might easily have been obviated by allowing a deduction of $20,000 from every direct inheritance, as in the Illinois law which was sustained. Only by interpreting the Ohio decision as based mainly on the unequal exemption can it be reconciled with

[1] Nunnemacher *vs.* State, 129 Wis. 190.

the decision of the United States Supreme Court upholding progressive taxation. But as the Ohio Supreme Court's decision does not itself make it clear just how much weight was attached to the inequality of the exemption, it is perhaps worth while to quote the opinion of the lower court in the same case. The circuit court of Hamilton County had held the tax unconstitutional on the sole ground that there was an exemption of $20,000 without a corresponding deduction from the taxable estates. "If the statute exempted $20,000 (or any other sum) of *every* estate from taxation," said this court, "it would, in our judgment, be equal and valid, even in imposing a graded tax, as it does."[1]

It may be remembered also that two acts of the legislature of Minnesota have been declared unconstitutional partly because the exempt amount was not deducted from the value of taxable inheritances;[2] but the value of these cases as precedents is much diminished by the direction of the Minnesota constitution that the tax should be levied on inheritances "above a fixed and specified sum." In Tennessee, where the same objection was raised in the case of a $250 exemption, the tax was sustained.[3]

The Pennsylvania direct-inheritance tax was declared unconstitutional because of the exemption of $5000,[4] although that amount was to be deducted from every estate; but this decision is wholly without authority in other states, because it was based upon the Pennsylvania constitution's prohibition of exemptions, and upon the discredited theory that an inheritance tax is a tax on property.

The Wisconsin act of 1899 was declared unconstitutional

[1] State *vs.* Ferris, 9 O. Circ. Ct. R. 298.

[2] Drew *vs.* Tifft, 79 Minn. 175; State *ex rel.* Frye *vs.* Bazille, 87 Minn. 500. See p. 121, *supra*.

[3] State *vs.* Alston, 94 Tenn. 674.

[4] Cope's Estate, 191 Pa. 1.

because the exemption was made to depend upon the value of the entire estate, and not upon that of the separate shares into which it was divided. The statute was attacked by counsel as a violation of a requirement of the state constitution that "the rule of taxation shall be uniform," and also of the rule of equal protection in the Fourteenth Amendment to the Federal Constitution. Without denying the legislature's power of classification, the court held that in this case people in the same class were subject to different rules, some being exempt and some being taxed, in that the act discriminated between persons receiving equal amounts from estates above and below $10,000 in value. The court said:

> No rational distinction or difference can be drawn between the two legatees simply because the estates from which their legacies come are of slightly different size. . . . This is not the equal protection of the laws.[1]

This decision, however, is at variance with a decision of the Massachusetts Supreme Court on the same point, under a similar exemption in the Massachusetts law. Said this court:

> In all, or nearly all, systems of taxation there are some exemptions; but the objection here is that estates whose value, after payment of all debts, shall not exceed ten thousand dollars are exempt, without regard to the value of the property received by the devisees, legatees, heirs, or distributees. It is argued that the excise, if upon the privilege of taking property by will or descent, should be the same whenever the privilege enjoyed is the same in kind and extent, whatever may be the value of the estate, and that the exemptions should relate to the value of the property received by those who have the

[1] Black *vs.* State, 113 Wis. 205; 89 N. W. 522.

privilege of receiving it, and not to the value of the estate. But the right or privilege taxed can perhaps be regarded either as the right or privilege of the owner of the property to transmit it on his death, by will or descent, to certain persons, or as the right or privilege of these persons to receive the property. The tax too has some of the characteristics of a duty on the administration of the estates of deceased persons. The cost of administering small estates is proportionately greater than that of administering large ones, and this of itself, particularly in intestate estates, operates to diminish the amounts received very much as a tax would. The statutes of the different States and nations which have levied taxes on devises, legacies, and inheritances have usually made exemptions, and these have sometimes related to the value of the estates, and sometimes to the value of the property received by the heirs, devisees, legatees, or distributees. The exemption in the statute under consideration is certainly large as an exemption of estates, but it is peculiarly within the discretion of the Legislature to determine what exemptions should be made in apportioning the burdens of taxation among those who can best bear them, and we are not satisfied that this exemption is so clearly unreasonable as to require us to declare the statute void.[1]

It thus appears that the law of exemption is in a very unsettled and unsatisfactory condition. In order to be on the safe side, however, legislators will do well to make the exemption depend upon the value of the separate inheritances, and to tax only the excess of each inheritance above the exempt amount.

One point which may be regarded as settled is that the exemption of direct heirs or other near relatives will not render an inheritance tax void for lack of uniformity. The reason for upholding a discrimination of this kind

[1] Minot *vs*. Winthrop, 162 Mass. 113, 123, 124 followed in State *vs*. Alston, 94 Tenn. 674, 682.

has been stated by the Massachusetts Supreme Court as follows:

The tax imposed by the statute we are considering is said to be unequal, because it is not imposed upon all estates and upon all heirs, devisees, legatees, and distributees. To make a distinction between collateral kindred or strangers in blood and kindred in the direct line in reference to the assessment of such a tax, either by exempting the kindred in the direct line or by imposing on collaterals and strangers a higher rate of taxation, has the sanction of nearly all States which have levied taxes of this kind. It has a sanction in reason, for the moral claim of collaterals and strangers is less than that of kindred in the direct line, and the privilege is therefore greater.[1]

IV. Domicile and Situs

Some of the most difficult legal problems in connection with the inheritance tax are those which arise from interstate complications.[2] Such problems are by no means peculiar to the inheritance tax, yet in theory there is probably no other form of taxation which leaves room for so many difficulties of this kind. In determining where an inheritance is to be taxed the law-makers may consider, besides the location of the property, the domicile, not of one person alone, but of either the decedent or the heir, or both; and the jurisdiction in which the will is made, or the estate settled, or even the residence of the executors may be taken into consideration. Of course citizenship may be substituted for domicile as the determining factor, or both may be considered together. But in the United States, as a rule, the only circumstances taken into consideration are

[1] Minot *vs.* Winthrop, 162 Mass. 113, 123. See also Hagerty *vs.* State, 55 O. St. 613; State *vs.* Henderson, 160 Mo. 190; State *vs.* Clark, 30 Wash. 439; Campbell *vs.* California, 200 U. S. 87.

[2] See also Dos Passos, *Law of Collateral and Direct Inheritance, Legacy and Succession Taxes*, chap. 4; 45 Albany Law Journal, 331.

the location of the property and the residence or domicile of the decedent; thus the problem is practically the same as in the case of the property tax. Louisiana formerly had a tax on foreign heirs alone, and Iowa and Washington now discriminate heavily against non-resident aliens as collateral heirs or legatees; but no state attempts to tax inheritances received by its citizens from foreign decedents unless the property itself is within the jurisdiction of the state. Not in all points do the various statutes agree so well. A few apply only to property within the jurisdiction of the taxing state, disregarding domicile altogether;[1] but the greater number attempt to tax the devolution both of all property within the taxing state and of all property left by residents of the state. The attempt has been partially defeated by decisions of the courts which hold that devolutions of real estate situated beyond the limits of the taxing state cannot be taxed.[2] In a case of this kind decided by the New York Court of Appeals[3] Judge Gray, who delivered the opinion of the court, argued as follows:

What has the state done, in effect, by the enactment of this tax law? It reaches out and appropriates for its use a portion of the property at the moment of its owner's decease; allowing only the balance to pass in the way desired by the testator, or permitted by its intestate law, and while, in so doing, it is exercising an inherent and sovereign right, it seems very clear to my mind that it affects only property which lies within it, and, consequently, is subject to its right of eminent domain. The theory of sovereignty, which invests the state with the right and the power to permit and to regulate the succession to property upon its owner's decease, rests upon the fact of an

[1] Weaver's Estate, 110 Ia. 328.

[2] Commonwealth *vs.* Coleman's Administrator, 52 Pa. 468; Bittinger's Estate, 129 Pa. 338.

[3] Matter of Swift, 137 N. Y. 77.

actual dominion over that property. In exercising such a power of taxation as is here in question, the principle, obviously, is that all property in the state is tributary for such a purpose, and the sovereign power takes a portion, or percentage, of the property, not because the legatee is subject to its laws and to the tax, but because the state has a superior right, or ownership, by force of which it can intercept the property, upon its owner's death, in its passage into an ownership regulated by the enabling legislation of the state.

And in a case in the Pennsylvania Supreme Court,[1] Mr. Chief Justice Paxson said:

It has not been made to appear how the state of Pennsylvania can impose a tax upon real estate situate in Maryland; and not only impose a tax upon it, but also charge it with a lien for such unpaid tax. While it is conceded that the powers of the state for taxing purposes are very great, they are necessarily limited to either property or persons within her borders. All property of the citizen within the state may be taxed, and all such property outside the state as is drawn to or follows in law the person or domicile of the owner, such as bonds and mortgages, moneys at interest, etc., no matter where situate. But real estate is not drawn to the person or domicile of the owner, for taxation or any other purpose, and hence cannot be taxed outside of the jurisdiction where it is situate. The taxation of property involves the reciprocal duty of protection on the part of the state levying such tax.

But the tax may be made to apply to personal property, wherever situated, if the decedent was domiciled in the taxing state, on the theory that the *situs* of personal property follows the person of the owner;[2] and on the other hand, personal property within the state may be taxed, although the decedent resided elsewhere. Thus in an early Penn-

[1] Bittinger's Estate, 129 Pa. 338.

[2] Matter of Swift, 137 N. Y. 77; Short's Estate, 16 Pa. 63; Hopkins' Appeal, 77 Conn. 644; Frothingham *vs.* Shaw, 175 Mass. 59; Hartman's Estate (N. J.), 62 Atl. 560.

sylvania case [1] it was held that the tax applied to securities in Pennsylvania, although both testator and legatee were domiciled in France. In like manner the North Carolina tax was held to apply to property in that state, though the decedent was domiciled in Canada.[2] More recently it has been decided that the Maryland tax applies to property in Maryland belonging to a resident of California, and consisting of national-bank stock, Baltimore city stock, Missouri state bonds, and cash; [3] and that the New York law taxes a non-resident's estate in New York, consisting of a mortgage on New York real estate, savings-bank deposits, and corporate stock and bonds.[4] In the New York case it did not appear whether the stock and bonds were issued by domestic or foreign corporations. The Pennsylvania tax has been held to apply to the interest of a non-resident decedent in a Pennsylvania limited partnership association.[5] The same theories of dominion and protection which were applied in the case of real estate have been used also to show that personal property may be taxed where it is situated; and thus the fiction *mobilia sequuntur personam* has been much less completely recognized in America than in England, where the decedent's domicile is the sole test of liability to the legacy duty.[6] But the English statute is not explicit upon this point, as the American statutes are; and the judicial construction of the legacy-duty act is just the reverse of the rule as to probate duty [7] and estate duty.

[1] Commonwealth *vs.* Smith, 5 Pa. 142.

[2] Alvany *vs.* Powell, 2 Jones Eq. 51.

[3] State *vs.* Dalrymple, 70 Md. 294.

[4] Matter of Romaine, 127 N. Y. 80.

[5] Small's Estate, 151 Pa. 1.

[6] Thomson *vs.* Advocate-General, 12 Clark & Finn. 1; Lenaghan, *The Legacy Duty Considered with Reference to the Law of Domicile.*

[7] Attorney-General *vs.* Hope, 1 Cromp., Mees & Ros. 530.

The case of real estate directed by will to be sold gives rise to a complication peculiar to the inheritance tax. It has been held that such a direction works a conversion of the real estate into personalty at the testator's death, and that the tax may therefore be exacted in respect of foreign realty by the state of the testator's domicile.[1] But when the executors have merely the power to sell, without a positive direction to do so, the property is still regarded as real estate, and can be taxed only where it is situated.[2]

There is a Pennsylvania decision which distinguishes between tangible and intangible personal property, holding that the latter has no *situs* other than the owner's domicile, and hence that a non-resident decedent's United States bonds deposited with a Pennsylvania company for safekeeping cannot be taxed in Pennsylvania.[3] The New York courts have sometimes suggested a similar distinction, at least in favor of the stocks and bonds of foreign corporations;[4] but even such securities were held to be taxable in a decision[5] which the United States Supreme Court afterwards affirmed, though without discussing this particular point.[6] Both in New York and in Massachusetts, the courts have upheld the legislatures in their evident intention to tax the shares of domestic corporations, without regard to the domicile of the decedent or executor or the place in which the certificates of stock are kept. The stock is held to be

[1] Miller *vs.* Commonwealth, 111 Pa. 321; Williamson's Estate, 153 Pa. 508; *contra*, Connell *vs.* Crosby, 210 Ill. 380, 390.

[2] Drayton's Appeal, 61 Pa. 172; Matter of Swift, 137 N. Y. 77, 86. Pecuniary legacies aggregating more than the value of the personal property are equivalent to a direction to sell real estate. Vanuxem's Estate, 212 Pa. 315.

[3] Orcutt's Appeal, 97 Pa. 179.

[4] Matter of Enston, 113 N. Y. 174, 181; Matter of James, 144 N. Y. 6.

[5] Matter of Merriam, 141 N. Y. 479, 485.

[6] United States *vs.* Perkins, 163 U. S. 625.

within the jurisdiction of the state because it is regarded simply as an interest in the property of the corporation;[1] and the Massachusetts legislature has now carried out the same idea to its logical conclusion by dividing the tax on the stock of public-service corporations in proportion to mileage, at least where the company is incorporated also in another state.[2]

The Federal courts have had occasion both to construe the intention of Congress with respect to property of foreign decedents and to define the power of a state over property in other states. The act of 1864 imposing a legacy tax on property passing "either by will or by the intestate laws of any State or Territory" was held not to apply to American securities bequeathed by a French citizen domiciled in France to a son also domiciled there, by a will executed in conformity with the French law, although a probate court in Massachusetts appointed an executor to transfer the securities to the legatee. It was considered immaterial whether the property passed by will or by intestate succession.[3]

This decision has been followed by the Supreme Court in construing the similar language of the act of 1898. While conceding it to be within the power of Congress to impose an inheritance tax upon property in this country, the court held that it had not done so in the case of foreign decedents leaving the property to their children also domiciled abroad, even though in one case the will was executed in this country during a temporary sojourn, and probated in a New York court.[4] The succession was held to take place in the country of domicile,

[1] Matter of Bronson, 150 N. Y. 1, 9; Callahan *vs.* Woodbridge, 171 Mass. 595; Greves *vs.* Shaw, 173 Mass. 205; Moody *vs.* Shaw, 173 Mass. 375.

[2] Acts of 1907, chap. 563, § 2. See p. 133, *supra.*

[3] United States *vs.* Hunnewell, 13 Fed. Rep. 617.

[4] Moore *vs.* Ruckgaber, 184 U. S. 593.

because the practice of all civilized nations is to recognize the law of the domicil as governing the transmission and inheritance of personal property, and to prevent the confusion that would follow if estates, situated possibly in half a dozen countries, were administered and distributed according to the laws of each country in which any portion of such estate happened to be located.[1]

But where two states unmistakably attempt to tax the same succession, the Supreme Court, though recognizing the inconsistency and resulting hardship, finds no constitutional prohibition of the double taxation. A debt due from a New York firm and a deposit with a New York trust company were held to be subject to the New York transfer tax, although the whole succession, including the deposit, had been taxed in Illinois where the decedent lived:

The fact that two States, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. The universal succession is taxed in one State, the singular succession is taxed in another. The plaintiff has to make out her right under both in order to get the money. The same considerations answer the argument that due faith and credit are not given to the judgment in Illinois.

The New York law did not impair the obligation of the contract of deposit, and did not deprive the legatee of any of the privileges and immunities of a citizen nor otherwise violate the Fourteenth Amendment. The court seems to have treated the deposit as a debt and applied the same reasoning to both obligations:

If the transfer of the deposit necessarily depends upon and involves the law of New York for its exercise, or, in other

[1] Eidman *vs.* Martinez, 184 U. S. 578, 591.

words, if the transfer is subject to the power of the State of New York, then New York may subject the transfer to a tax. But it is plain that the transfer does depend upon the law of New York, not because of any theoretical speculation concerning the whereabouts of the debt, but because of the practical fact of its power over the person of the debtor. . . .

Power over the person of the debtor confers jurisdiction, we repeat. And this being so, we perceive no better reason for denying the right of New York to impose a succession tax on debts owed by its citizens than upon tangible chattels found within the State at the time of the death. The maxim *mobilia sequuntur personam* has no more truth in the one case than in the other.[1]

But while deposits are taxable at the place of deposit, whether regarded as debts or as the equivalent of actual money,[2] and quite irrespective of the place where the certificates of deposit may be kept,[3] bonds are considered by the New York courts at least as following the owner's domicile.[4]

The general rule seems to be that while real estate is taxed only where it is situated, personal property may be included in inheritance-tax appraisals either where it is situated or at the domicile of the decedent, or even in both places, according to the apparent intention of the legislatures; while corporate stocks may be reached also at the corporation's home office. This leaves room for much confusion and double taxation, very much as in the case of property, income, and corporation taxes. The law on this point is therefore in an unsatisfactory state, and it will probably remain so until changed by some form of interstate action, or at least until reciprocal exemptions or

[1] Blackstone *vs.* Miller, 188 U. S. 189.

[2] Matter of Houdayer, 150 N. Y. 37.

[3] Matter of Hewitt, 181 N. Y. 547; Report of the Comptroller of the State of New York, January, 1906, p. xlii.

[4] Matter of Bronson, 150 N. Y. 1; Matter of Whiting, 150 N. Y. 27; Matter of Morgan, 150 N. Y. 35; Report of the Comptroller, January, 1906, p. xliii.

deductions, such as are found in the German laws and in the British statute, become much more common in America. West Virginia has such a provision; inheritance taxes due to another state or country on personal property therein are deducted from the tax otherwise payable in West Virginia, and the personalty of non-resident decedents is exempt in so far as the state or country of residence exempts the personalty of West Virginians.[1] Massachusetts has now adopted a similar plan to prevent double taxation;[2] while Vermont goes even further and unconditionally deducts any inheritance tax lawfully paid elsewhere.[3] Connecticut, after four years' trial of a reciprocal provision with reference to securities and deposits,[4] has adopted a retaliatory rather than reciprocal arrangement with reference to the stock and bonds of domestic corporations. The Connecticut tax now applies to the following property of non-resident decedents passing by will or inheritance under the laws of other states or countries:

All real estate and tangible personal property, including moneys on deposit, within this state; all intangible personal property, including bonds, securities, shares of stock, and choses in action the evidences of ownership of which shall be actually within this state; shares of the capital stock or registered bonds of all corporations organized and existing under the laws of this state the certificates of which stock or which bonds shall be without this state, where the laws of the state or country in which such decedent resided shall, at the time of his decease, impose a succession, inheritance, transfer, or similar tax upon the shares of the capital stock or registered bonds of all corporations organized or existing under the laws of such state or country, held under such conditions at their decease by residents of this state.[5]

[1] Acts of 1904, chap. 6, § 6.
[2] Acts of 1907, chap. 563, § 3.
[3] Public Acts of 1904, no. 30, § 3.
[4] Public Acts of 1903, chap. 63.
[5] Public Acts of 1907, chap. 179.

CHAPTER IX

ECONOMIC THEORY

I. Historical Survey

The earliest discussion of the justice of the inheritance tax which has come down to us is that of Pliny the Younger in his Panegyric on the Emperor Trajan. As might be expected in a panegyric, Pliny expressed unqualified approval of Trajan's reforms, especially the exemption of the nearest relatives in all cases. Without such an exemption, he considered the *vicesima hereditatium* oppressive; he called it "*tributum tolerabile et facile heredibus dumtaxat extraneis, domesticis grave.*" [1] He argued that so heavy a tax as the *vicesima* would be borne with great reluctance by those who were entitled to their inheritance by birth, kinship, and community of family worship; who had always regarded the property as their own possession, to be passed on from them in turn to their heirs.[2] And a father who had just lost his son should not be called upon in his bereavement to take an inventory of what had been left him; [3] to tax him at such a time would be to add to his burden of

[1] *Panegyricus*, xxxvii.

[2] *Ibid.*, xxxvii: "Videlicit, quod manifestum erat, quanto cum dolore laturi, seu potius non laturi homines essent, destringi aliquid et abradi bonis, quæ sanguine, gentilitate, sacrorum denique societate, meruissent, quæque nunquam ut aliena et speranda, sed ut sua semperque possessa, ac dienceps proximo cuique transmittenda cepissent."

[3] *Ibid.*, xxxviii: "Nemo recentem et attonitam orbitatem ad computationem vocet, cogatque patrem, quid reliquerit filius, scire."

sorrow,[1] to treat father and son as strangers.[2] For a father to become the sole heir of his own son was a great enough sorrow, without making the state an unwelcome co-heir.[3]

Adam Smith gave a reason of a less sentimental and more economic nature for exempting direct heirs in some cases:

> The death of a father, to such of his children as live in the same house with him, is seldom attended with any increase, and frequently with a considerable diminution of revenue; by the loss of his industry, of his office, or of some life-rent estate, of which he may have been in possession. That tax would be cruel and oppressive which aggravated their loss by taking from them any part of his succession. It may, however, sometimes be otherwise with those children who, in the language of the Roman law, are said to be emancipated; in that of the Scotch law, to be foris-familiated; that is, who have received their portion, have got families of their own, and are supported by funds separate and independent of those of their father. Whatever part of his succession might come to such children, would be a real addition to their fortune, and might, therefore, perhaps, without more inconveniency than what attends all duties of this kind, be liable to some tax.[4]

But he charged inheritance taxes in general, in common with all other taxes on the transfer of property, with violating his first canon of taxation, "the frequency of transference not being always equal in property of equal value." He opposed them also on the ground that they "tend to diminish the funds destined for the maintenance of productive labour." For "the revenue of the sovereign," he added, "seldom maintains any but unproductive labourers."

[1] *Panegyricus*, xxxviii: "Filio amisso, insuper affici alio dolore."

[2] *Ibid.*, xxxvii: "Quod liberos ac parentes faceret extraneos."

[3] *Ibid.*, xxxviii: "Sic quoque abunde misera res est, pater filio solus heres: quid si coheredem non a filio accipiat?"

[4] *Wealth of Nations*, bk. v, chap. ii, pt. ii, appendix to articles 1 and 2.

Ricardo elaborated this objection, but avoided the dangerous ground of distinguishing between productive and unproductive labor:

It should be the policy of governments . . . . never to lay such taxes as will inevitably fall on capital; since by so doing, they impair the funds for the maintenance of labor, and thereby diminish the future production of the country. . . . If a legacy of £1,000 be subject to a tax of £100, the legatee considers his legacy as only £900 and feels no particular motive to save the £100 duty from his expenditure, and thus the capital of the country is diminished; but if he had really received £1,000 and had been required to pay £100 as a tax on income, on wine, on horses, or on servants, he would probably have diminished, or rather not increased his expenditure by that sum, and the capital of the country would have been unimpaired.[1]

J. B. Say also believed that the national capital would be diminished by the amount of the inheritance tax,[2] but on the other hand he argued that this was one of the least difficult of all taxes to pay, and so concluded that it would be injurious only when carried to excess.[3]

McCulloch was little influenced by the tax-on-capital argument, and looked at the effect of the tax from another point of view. He criticised Ricardo's objection as follows:

It might, however, be exceedingly inexpedient to impose or increase any one of the taxes suggested by Mr. Ricardo; and, provided the tax on successions be kept within due limits, we doubt whether the considerations he has stated be entitled to much weight. The slender influence of the tax over the legatee is, perhaps, correctly stated by Mr. Ricardo; but then it

[1] *Principles of Political Economy and Taxation*, chap. viii.

[2] *Traité d'economie politique* (huitième édition), livre iii, chap. ix.

[3] *Cours complet d'economie Politique*, pt. viii, chap. iv.

is to be borne in mind that the individual who leaves property is aware that it will be subjected to the tax, and he, consequently, has an additional motive to save and amass in order that his heirs may not be prejudiced by its payment. And this circumstance, and the fact of the tax being imposed when the contributors are receiving money or other property, and, consequently, when it is most convenient for them to pay it, appears to be a sufficient answer to the objections against it.[1]

Jeremy Bentham, writing in the last decade of the eighteenth century, propounded the following conundrum:

What is that mode of supply, of which the twentieth part is a tax, and that a heavy one, while the whole would be no tax, and would not be felt by anybody?

He proposed to solve the riddle by abolishing intestate inheritance except in the case of immediate relatives, and limiting the power of bequest of testators having no direct heirs; leaving fathers free to dispose of their property as they pleased. He furthermore suggested that the state should have an equal share in the inheritance of such relatives as grandparents, uncles and aunts, and perhaps nephews and nieces, and a reversionary interest in the successions of childless heirs without prospect of children. In defending his proposal he said:

The advantageous properties of the proposed resource may be stated under the following heads, viz.: 1. Its unburthensomeness. 2. Its tendency to cut off a great source of litigation. 3. Its favorableness to marriage. 4. Its probable popularity on that score.

But Bentham maintained that the extension of escheat which he proposed was entirely different from a tax on

[1] *Taxation and the Funding System*, p. 290.

successions. Ricardo afterward objected to the inheritance tax on the ground that it was not sufficiently recognizable as a tax to be an incentive to economy; but Bentham objected to it because it was too plainly a tax:

Suffer a mass of property in which a man has an interest to *get into his hands*, his expectation, his imagination, his attention at least, fastens upon the whole. Take from him afterward a part; . . . the parting with it cannot but excite something of the sensation of a loss.

But in the extension of escheat,

the larger the share of the public the better, even with reference to his feelings; for the larger it is, the more plainly it will show as a *civil* regulation in matters of succession; the smaller, the more palpably it will have the air of a *fiscal* imposition—the more it will feel, in short, like a *tax*. . . . Pass, instead of the tax, a law of inheritance, giving the public *fifty per cent* upon certain successions, the burthen may be next to nothing; pass a law of inheritance, giving the public the whole, the burthen vanishes altogether.[1]

Something akin to this idea of Bentham's is occasionally met with among more recent writers. Thus Stourm says of the taxation of inheritances:

The former owners have disappeared, the new have not yet come into possession; meanwhile the fortune seems to rest in air, at the mercy of the budgetary requirements.[2]

And a brilliant American journalist has argued thus:

It is much more merciful to avaricious human nature to deprive it of something it has never had than to lop off anything—however superfluous—which has been actually enjoyed.

[1] Supply without Burden; or Escheat vice Taxation, 1795.

[2] *Systèmes généraux d'impôts*, chap. xviii.

. . . On the whole, I can see no better way to diminish the natural pangs attendant upon paying taxes than to collect as much income as possible in the fleeting moments when the property belongs to nobody in particular.[1]

John Stuart Mill advocated not only progressive inheritance taxes,[2] but the abolition of collateral inheritance, and a limitation of the amount which any one should be allowed to take either by inheritance or bequest.[3] He was more radical than Bentham; he adopted the substance of Bentham's proposal as to collateral inheritance, but he went further and wished to limit inheritance in the direct line also. After laying down the principles that the law ought to do for the children or dependents of an intestate whatever it was the duty of the parent or protector to have done, and that it is not ordinarily the duty of any one to make pecuniary provision for collateral relatives, he continued:

I see, therefore, no reason why collateral inheritance should exist at all. . . . There is no good reason why the accumulations of some childless miser should, on his death (as every now and then happens) go to enrich a distant relative who never saw him, who perhaps never knew himself to be related to him until there was something to be gained by it, and who had no moral claim upon him of any kind, more than the most entire stranger.

The claims of children are of a different nature: they are real, and indefeasible. But even of these, I venture to think that the measure usually taken is an erroneous one. . . . . Whatever fortune a parent may have inherited, or, still more, may have acquired, I cannot admit that he owes to his children, merely because they are his children, to leave them rich,

1 Kate Field's *Washington*, February 8, 1893.

2 *Principles of Political Economy*, bk. v, chap. ii, § 3.

3 *Ibid.*, bk. ii, chap. ii, §§ 3, 4; bk. v, chap. ix, § 1.

without the necessity of any exertion. . . . Without supposing extreme cases, it may be affirmed that in a majority of instances the good, not only of society but of the individuals, would be better consulted by bequeathing to them a moderate, rather than a large provision. . . . I should prefer to restrict, not what any one might bequeath, but what any one should be permitted to acquire, by bequest or inheritance.

The proposal to abolish inheritance between distant relatives has been approved by writers of the most diverse views. In this the socialists are in accord with the utilitarian philosophy. The demand of the earlier Saint Simonians, who wished to abolish all inheritance, was greatly modified by Enfantin, who was willing to permit inheritance between near relatives, to be limited by heavy inheritance taxes. In like manner Bluntschli, at the time of the preparation of the civil code of Zürich, proposed inheritance taxes of from five to thirty per cent for relatives descended from common great-grandparents, and the abolition of inheritance and bequest between all other persons.[1] He based his proposals on what he called a right of inheritance in the state and commune. This conception of *staatliches Erbrecht* has been adopted by many of the later German writers; and either from this point of view or owing to more purely fiscal considerations, the inheritance tax has been approved by most writers on finance and economics.[2] Even

[1] "Das Erbrecht und die Reform des Erbrechtes." *Gesammelte kleine Schriften*, 233 *et seq.*

[2] Rau, *Finanzwissenschaft*, §§ 237, 405; Wagner, *Finanzwissenschaft*, §§ 482, 483; Roscher, *Finanzwissenschaft*, § 76; Schäffle, *Steuerpolitik*, p. 508; von Stein, *Finanzwissenschaft*, ii, 209; Umpfenbach, *Finanzwissenschaft*, §§ 203-206; Cohn, *Science of Finance*, § 348; von Scheel, *Erbsschaftssteuern und Erbrechtsreform;* Bacher, *Die deutschen Erbschafts- und Schenkungssteuren;* Krüger, *Die Erbschaftssteuer;* Eschenbach, *Erbrechtsreform und Erbschaftssteuer*; Schall, "Verkehrs und Erbschaftssteuern," in Schönberg's *Handbuch der politischen Oekon-*

Bastable, who finds a number of theoretical objections to it, concedes " that it has come to be almost universally regarded as an essential constituent of any well-arranged scheme of finance." [1] As to the extent to which it should be employed there are, of course, wide divergences of opinion.

In America progressive inheritance taxes have been advocated alike in the platform of the Knights of Labor, in the organ of the Nationalists, and in the writings and addresses of one of our most famous millionaires. Mr. Andrew Carnegie has more than once declared himself in favor of an inheritance tax rising as high as fifty per cent in the case of the largest fortunes. In a lecture delivered in New York City in February, 1892,[2] he even went so far as to say:

> Every dollar of taxes required might be obtained in this manner, without interfering in the least with the forces which tend to the development of the country through the production of wealth.

But he assumed that one-fifth of the property of deceased persons would go to the state; much too large a proportion unless all successions, large and small, were to be heavily taxed. In 1889 Mr. Carnegie wrote as follows: [3]

omie, iii, 470; Frantz, *Die sociale steuerreform,* pp. 85-110; von Kaufmann, *Die Finanzen Frankreichs,* p. 292; De Parieu, *Traité des impôts,* livre vi, chap. iii; Leroy-Beaulieu, *Science des finances,* chap. xi; Sidgwick, *Principles of Political Economy,* bk. iii, chap. viii, and *Elements of Politics,* chap. xi, § 5; Ely, *Taxation in American States and Cities,* chap. viii, and *North American Review,* 153: 54; Seligman, *Essays in Taxation,* chap. v. See also quotations given by Schanz in *Finanz-Archiv,* vol. 18.

[1] *Public Finance,* bk. iv, chap. viii, § 7.

[2] *Lectures to Young Men,* p. 15.

[3] *North American Review,* 148: 659.

By taxing estates heavily at death the state marks its condemnation of the selfish millionaire's unworthy life. It is desirable that nations should go much further in this direction. Indeed, it is difficult to set bounds to the share of a rich man's estate which should go at his death to the public through the agency of the state.

And in his New York lecture he declared:

There are exceptions to all rules, but not more exceptions, we think, to this rule than to rules generally, that the "almighty dollar" bequeathed to children is an "almighty curse." . . . No man has a right to handicap his son with such a burden as great wealth.

The same ideas were developed as follows in his work on "The Gospel of Wealth":

The growing disposition to tax more and more heavily large estates left at death is a cheering indication of the growth of a salutary change in public opinion. . . . Of all forms of taxation this seems the wisest. Men who continue hoarding great sums all their lives—the proper use of which for public ends would work good to the community from which it chiefly came—should be made to feel that the community, in the form of the State, cannot thus be deprived of its proper share. . . . By all means such taxes should be graduated, beginning at nothing upon moderate sums to dependents, and increasing rapidly as the amounts swell, until of the millionaire's hoard, as of Shylock's, at least

> The other half
> Comes to the privy coffer of the State.

This policy would work powerfully to induce the rich man to attend to the administration of wealth during his life, which is the end that society should always have in view, as being by far the most fruitful for the people. Nor need it be feared that this policy would sap the root of enterprise and render

men less anxious to accumulate, for, to the class whose ambition it is to leave great fortunes and be talked about after their death, it will attract even more attention, and, indeed, be a somewhat nobler ambition, to have enormous sums paid over to the State from their fortunes.[1]

That the parent who leaves his son enormous wealth generally deadens the talents and energies of the son, and tempts him to lead a less useful and less worthy life than he otherwise would, seems to me capable of proof which cannot be gainsaid.[2]

If you will read the list of the immortals who "were not born to die," you will find that most of them have been born to the precious heritage of poverty.[3]

Why should men leave great fortunes to their children? If this is done from affection, is it not misguided affection? Observation teaches that, generally speaking, it is not well for the children that they should be so burdened. Neither is it well for the State. Beyond providing for the wife and daughters moderate sources of income, and very moderate allowances indeed, if any, for the sons, men may well hesitate; for it is no longer questionable that great sums bequeathed often work more for the injury than for the good of the recipients. Wise men will soon conclude that, for the best interests of the members of their families, and of the State, such bequests are an improper use of their means.[4]

Finally, President Roosevelt, in his famous "muck-rake" speech on the laying of the corner-stone of the House of Representatives office building, April 14, 1906, said:

As a matter of personal conviction, and without pretending to discuss the details or formulate the system, I feel that we shall ultimately have to consider the adoption of some such

[1] *The Gospel of Wealth*, pp. 11, 12.

[2] *Ibid.*, p. 54.

[3] *Ibid.*, p. xii.

[4] *Ibid.*, p. 9.

scheme as that of a progressive tax on all fortunes, beyond a certain amount, either given in life or devised or bequeathed upon death to any individual—a tax so framed as to put it out of the power of the owner of one of these enormous fortunes to hand on more than a certain amount to any one individual; the tax, of course, to be imposed by the National and not by the state government.

And he has elaborated this idea in his Message of 1906 and elsewhere.

II. The Arguments Classified

If we examine the principal arguments which have been adduced to establish the justice of the inheritance tax, we shall find that they are no less than eight in number, and rest upon three quite different conceptions of the nature of the tax. The tax is regarded (1) as a limitation of inheritance, (2) as a fee, or payment for special benefits received, and (3) as a tax according to the ability of the tax-payer. Economic theory thus agrees with legal theory in distinguishing between taxation and the regulation of inheritance; but it goes farther and distinguishes also between fees and taxes, and between the different theories of taxation.

AS A LIMITATION OF INHERITANCE

1. *The Extension-of-Escheat Argument* is that represented by Bentham and by all who would abolish or limit collateral inheritance. Briefly stated, the argument is that no good reason exists for intestate inheritance between distant relatives, for in modern times the family consciousness extends only to the nearest degrees of relationship; hence the property of those dying without near relatives should escheat to the state. The same thing may be accomplished in part by an inheritance tax; and even applying the principle in its entirety, since it is difficult and perhaps impossible to fix a precise point at which rights of inherit-

ance should cease altogether, it is perhaps more equitable to take them away from some relatives only in part, by means of an inheritance tax graduated according to the degree of relationship and rising to high percentages in the case of distant relatives. This argument applies primarily to cases of intestacy; yet such a limitation of inheritance, especially if its purpose were at all fiscal, would naturally be accompanied by a corresponding limitation of the power of bequest.

2. *The Diffusion-of-Wealth Argument.* Inheritance may be limited not only as to the persons who may inherit, but also as to the amount which any person may take. This form of limitation was proposed by Mill, and has frequently been advocated as a check upon the perpetuation of dangerously large fortunes. Some years ago, for example, a bill to limit inheritances and bequests to $500,000 in the case of direct heirs and $100,000 in other cases was introduced in the Illinois legislature, on the recommendation of a special committee of the Illinois Bar Association.[1] The limitation of inheritance in some such way as this has been so frequently proposed of late that it must be regarded as at least a possibility of the future. But if it is to be realized, it would better be by means of a progressive inheritance tax; for it would be much less arbitrary to adopt such a graduated scale than to fix a point up to which inheritance and bequest might operate without restriction, and at which they should abruptly cease. Such a progressive inheritance tax will have a double effect upon the distribution of wealth: it will affect the size of large inheritances directly by diminishing them in greater proportion than small ones, and if the rate be made to depend upon the

[1] Ely, *Taxation in American States and Cities*, pp. 515-523; Jacobson, *Higher Ground*, pp. 194-202.

value of the separate shares it will also tend to encourage the division of large estates by bequest or gift. An inheritance tax may affect the distribution of wealth in still another way, by discriminating rates or exemptions in favor of bequests to servants or for charitable purposes.

Of all the arguments for the inheritance tax, the diffusion-of-wealth argument shows the nearest approach to socialistic tendencies. It was the argument of the Nationalists, but it is also the argument of Mr. Carnegie when he advocates a progressive inheritance tax rising as high as fifty per cent in the case of large amounts. Mr. Edward Bellamy carried this argument so far that he was not willing to permit any graduation of the tax except according to amount; in his organ *The New Nation* he denounced graduation according to relationship as absurd and vicious, but expressed the belief "that the drastic application of the inheritance tax is eventually to be one of the most efficacious instruments in preparing the way for economic equality." [1] But such utterances as this on the part of socialists must not be allowed to create the impression that the limitation of inheritance through progressive taxation is essentially a socialistic measure. Inheritance and bequest are not only not natural rights, they are not even necessary consequences of the right of private property; and hence the proposal to restrict inheritance and bequest, by taxation or otherwise, is no attack upon fundamental property rights.

AS A FEE

3. *The Partnership Argument* is simply the benefit theory of taxation in general applied to the inheritance tax. The state is represented by Eschenbach [2] as a silent partner in

[1] *The New Nation*, March 5, 1892, and March 4, 1893.

[2] *Erbrechtsreform und Erbschaftssteuer*, pp. 54, 55.

the business of each citizen, without whose aid and protection it would be impossible to transact business or amass wealth; when the partnership is dissolved by death, the silent partner is entitled to a share of the capital. Stated in this form the argument may seem rather fanciful; but in its essence it is simply a statement of the intimate relations which exist between the individual and the state, and of the manifold useful offices performed by government for individuals, which may be conceived to give the state a better claim to the property of a decedent than can be advanced by any individual who was of no assistance to the owner in accumulating it. But this argument is in reality not so much a justification of any particular kind of tax as of taxation in general. Mr. Carnegie has recently expressed a somewhat different idea, leading to the same practical conclusion, in saying that the community creates the millionaire's wealth, and especially certain kinds of wealth.[1]

4. *The Value-of-Service Argument.* The inheritance tax is sometimes considered as a payment, not for the benefits of government in general, but for particular services connected with the institutions of inheritance and bequest. It is argued that since these are not natural rights, but privileges conferred by positive law, those who benefit from them owe something to the state in return for the legal regulations which give them the right to the property of another after his death, for the legal proceedings necessary to put them in possession, and for the protection of the property while the transfer is being effected, when it would otherwise be especially liable to unlawful depredations or to unauthorized appropriation. Leroy-Beaulieu compares the tax to an insurance premium;[2] but the analogy is imper-

[1] *North American Review,* 183: 1098 (Dec. 7, 1906).

[2] *Science des finances,* chap. xi.

fect, for it is not the function of government to make good losses, but to prevent them.

This theory will justify graduation according to relationship, for there is a greater degree of probability that property would be transmitted in the direct line, even in the absence of laws of inheritance, than to remote relatives or strangers, who would seldom be in possession of the property at the owner's death, and would not very often receive it by death-bed gift; the state may therefore be said to render a greater service to the heirs when property goes to distant relatives than when it is simply handed down from father to son. In the case of a very remote relative the value of the state's service may be nearly the whole value of the inheritance, because there is very little likelihood of property passing to remote relatives except by operation of law.

5. *The Cost-of-Service Argument* considers the expense of the governmental action rather than its value to the heir. It would be difficult to determine the amount which ought to be paid in accordance with the value-of-service theory, but it certainly seems no more than just that the cost of probate courts should be defrayed, in large part at least, by those who receive the most direct and palpable benefits from them. This argument has been neglected by theoretical writers, but its influence may be plainly seen in the legislation of several American commonwealths and Canadian provinces where moderate inheritance taxes or probate fees have been imposed for the express purpose of defraying the cost of probate courts. This argument would logically result in a light tax, not proportional to the estate, but regressive, or even uniform for all estates; or still more logically, in a system of fees varying with the extent of the proceedings necessary.

AS A TAX

6. *The Back-Taxes Argument.* It is a well-known fact that vast amounts of personal property escape taxation altogether during the lives of the owners. Inheritance taxes have therefore been proposed as a means of collecting taxes which have been evaded by property-owners during their lives. It is frequently argued that the property which so generally escapes taxation year by year should at least be made to contribute something at the death of the owners, when it can no longer be concealed. The inheritance tax is regarded as an improved method of reaching personalty; and this explains why it is so often applied in this country to personal property alone, especially where direct heirs are concerned. It was this consideration, for example, which led the New York legislature to impose the direct-inheritance tax on personalty alone. The same argument was afterward advanced by Comptroller Roberts as a reason for making the inheritance tax progressive, for it is thought to be the wealthier citizens whose wealth the property tax chiefly fails to reach; and the failure of the state taxes on personal property was even urged in Congress in 1898 as a reason for a National inheritance tax. In short, so far as the motives of legislation can be ascertained, this argument of evasion seems to have been more influential than any other in the remarkable extension of the inheritance tax in America during recent years. Yet from the standpoint of strict justice between individuals the argument is vulnerable, for the inheritance tax bears no necessary relation to the amount of taxes which have been evaded in individual cases, unless where a tax is so universally and uniformly evaded as to be practically a dead letter. In Prussia and some of the Swiss cantons back taxes are collected after death, where evasion can be proved; but this is in addition to the inheritance tax, and rather different in principle.

7. *The Lump-Sum Argument.* The inheritance tax may better be regarded as in lieu not of taxes which have been evaded, but of taxes which have not been imposed; that is, as a property tax, or, as Bastable suggests, a capitalized income tax, paid once in a generation instead of once a year. It is paid after the death of the taxpayer, and hence at the time most convenient for him; or it may be considered as being paid by the heir in advance. Where there is no tax on personal property, for example, the inheritance tax may be regarded as taking its place; and even where all property is taxed, the tax rate may be expected to be reduced when an inheritance tax is imposed, and hence the latter is not an additional burden, but only a different method of raising part of the necessary revenue. A consideration which has been strongly urged in favor of the inheritance tax in Germany is that, levied in conjunction with an income tax, its effect is to increase the burden on income from property as compared with that from personal exertion—the same argument that led in Prussia to the introduction of a property tax supplementary to the income tax. The British estate duty, in particular, as distinguished from the legacy and succession duties paid on the separate shares, has been said to take the place of the yearly taxes on the capital value of property which in other countries are levied concurrently with income taxes.[1] The argument applies with special force to the estate duty because it is not graduated according to relationship; the weak point of the argument as applied to inheritance taxes in general is that it fails to account for such graduation.

8. *The Accidental-Income Argument.* From the standpoint of the heir, an inheritance is a sudden acquisition of property without effort on his part; a fortuitous and per-

[1] *Journal of the Society of Comparative Legislation*, 1905, pp. 490-493.

haps unexpected accretion of wealth, which manifestly increases his ability to pay taxes. Theoretically, his annual property tax will be increased by the possession of this added wealth, but in the case of personal property this cannot be depended upon. It is conceivable that where there is an income tax, inheritances might be taxed as one form of income; but on account of their accidental or gratuitous nature it seems better to subject them to a separate tax at a higher rate than the income tax, or in addition to the property tax.

Schanz presents this argument as follows:

> Inheritances and legacies mean for the recipient enrichment, and consequently an increase of the tax-paying ability. This applies to the inheritance tax in common with the production tax and income tax, but the latter have to do with that ability which has arisen from the work and economic activity of the tax-payers, while inheritances have in great measure the character of unearned wealth, and are therefore to be classed with lottery winnings, speculative gains, and similar acquisitions. If we tax that for which a man has labored, then it is still more reasonable that we must not leave untaxed the income acquired by chance.[1]

It is not true in every case, however, that the inheritance of property involves a real increase of tax-paying ability. As Adam Smith clearly pointed out, the death of the head of a family may be a positive economic loss to the wife and children who lived in the same house with him, enjoyed the use of his property during his life, and were dependent upon his personal exertions for their support. But if his income was from property rather than from trade or labor, his death will make little difference in the economic condition of the family; and in any case where property is inherited

[1] *Finanz-Archiv*, 18: 672.

by collateral relatives, or even by self-supporting adult children, there is a distinct increase of tax-paying ability. The more distant the relationship, the more truly may the acquisition be said to be accidental, and the less (other things being equal) will be the sacrifice involved in paying a given tax. This consideration logically results in graduation according to relationship, the widow and minor children being either wholly exempt or taxed only on the excess above an amount which will yield an income sufficient for subsistence.

The Co-heirship of the State. It remains to consider what is known as the theory of state co-heirship. Bluntschli, in proposing heavy inheritance taxes graduated according to relationship, and the abolition of rights of inheritance and bequest between all but near relatives, conceived the state and the local political units as co-heirs with individuals. The expression has been adopted by many German writers, and by Professor Ely in America.[1] Some of the Germans are so fond of the expression that they apply the name *staatliches Miterbrecht* to any theory of the limitation of inheritance; thus Krüger cites Bentham as the chief exponent of the theory of state co-heirship, although Bentham himself made no use of that expression. His plan was to abolish intestate inheritance except between immediate relatives, to restrict the power of bequest of testators having no direct heirs, and to give the state a part of the property of decedents in certain cases. He called the system which he proposed an extension of escheat, and based it not upon any right of inheritance in the state, but upon the absence of any reason for the operation of intestate inheritance between individuals not closely related. It is therefore a mistake to call Bentham a representative of the

[1] *North American Review*, 153: 61.

theory of state co-heirship. But later writers have combined with his argument the thought which lies at the basis of the partnership argument, and have urged that the state should inherit property from individuals because of what it does for them during their lives. The state is sometimes represented as a larger family; according to Umpfenbach [1] the bond of kinship between distant relatives loses itself in the whole nation, which therefore inherits the property of individuals as the family inherits the property of its members. Such expressions as these, however, must be regarded as metaphorical rather than scientific. The state may acquire property by escheat, but not by inheritance. Inheritance implies kinship, and the modern state is not a genetic association. The representation of the state as coheir is either a mere figure of speech (and as such it is as old as Pliny) or else it results from a confusion of inheritance and escheat. Inheritance is not a matter of public law; it is for private law to prescribe how far inheritance shall be permitted between individuals, and for public law to ordain that where inheritance ends escheat shall begin.

It is not altogether easy to decide which of the arguments for the inheritance tax is most conclusive. Some weight is to be attached to each of them, and certainly no one of them alone will be able to explain all the provisions of actual legislation. The arguments are not mutually exclusive, but are to some extent cumulative. The inheritance tax in general may be regarded as a limitation of inheritance, especially between collateral relatives; but it may also be sufficiently well justified from the standpoint of pure finance. It accords as well as any other one tax both with the principle of ability or minimum sacrifice and with that of benefit, and it serves as a useful adjunct to other taxes in bringing about justice in the fiscal system as a whole.

[1] *Finanzwissenschaft*, § 203.

III. Objections Considered

1. Inheritance taxes have been objected to chiefly on the ground that they are taxes on capital, and hence tend to diminish the national wealth. This objection has been raised by Adam Smith, Ricardo, and many later writers. Even so recent an author as Bastable has objected to the inheritance tax as a tax on property rather than on income, and as tending therefore to retard the growth of wealth. But the objection was really demolished by Mill, who showed that the diminution, if it occurred, would be not so much the result of the mode of taxation as of its excessive amount. Again, he said:

> The argument cannot apply to any country which has a national debt, and devotes any portion of revenue to paying it off; since the produce of the tax, thus applied, still remains capital, and is merely transferred from the tax-payer to the fundholder. But the objection is never applicable in a country which increases rapidly in wealth. The amount which would be derived, even from a very high legacy duty, in each year, is but a small fraction of the annual increase of capital in such a country; and its abstraction would but make room for saving to an equivalent amount: while the effect of not taking it, is to prevent that amount of saving, or cause the savings, when made, to be sent abroad for investment.

Leroy-Beaulieu has also pointed out that whether a tax is paid out of capital or income depends not upon the form of the tax, but upon its amount and the time allowed for payment. And even if capital should be the source as well as the subject of the tax in a given case, it does not necessarily follow that the national capital will be diminished; for, aside from the transference of capital suggested by Mill, the inheritance tax is favorable to saving on the part of those whose annual taxes are lighter than they would be

without it. Indeed, one of the arguments in favor of the inheritance tax is that by diminishing large fortunes it will tend to bring about a better distribution of wealth. We no longer regard capital as so sacred and inviolable a fund as the classical economists conceived it to be. It is conceivable that the amount of wealth devoted to production might even become too large in proportion to that remaining available for consumption, in which case the dissipation of some part of capital would be necessary to restore the equilibrium. However that may be, there is certainly danger in the concentration of too much wealth under the control of a few individuals; and hence the argument that a tax may be paid out of capital in some cases no longer appeals to us as a serious objection.

2. Adam Smith considered the inheritance tax unequal, on account of the varying frequency of transfers resulting from death; and the same objection has often been brought forward since his time. It has even been suggested that this cause of inequality may operate in the long run between families, because of hereditary differences in longevity. But this objection can be sustained only by regarding the inheritance tax as a property tax paid once in a generation; it looks only at the property, and disregards the ability of the tax-payer. If the tax be regarded as a limitation of inheritance, or as a probate fee, or as a tax based upon the increase of tax-paying ability resulting from inheritance, there is no inequality in exacting it as often as the devolution occurs. The tax may be paid at unequal intervals in respect of the same property, but it is paid each time by a different person, as a result of a new change of ownership, and hence from the standpoint of individual ability or sacrifice it cannot be said to be unequal. Questions of justice in taxation must always have regard for the individual tax-payer rather than for the property, which

neither appreciates justice nor resents oppression. Where the property remains in the same family and may be regarded as belonging to the members in common, it is true that heavy taxes becoming payable in quick succession might prove oppressive by making necessary the sale of family real estate; yet this is perhaps an argument rather for generous exemptions or low rates in favor of direct heirs, or for allowing the tax to be paid in instalments, than for any discrimination according to the intervals at which the devolutions occur. In the case of collateral inheritance it obviously makes little difference to the heir whether the property has changed hands twice within a few months or remained in the same hands for half a century. However, it is sometimes attempted to avoid the supposed inequality, at least in the case of direct successions, by exempting or partly exempting the second devolution of property within a given period. As another way out of the difficulty, Leroy-Beaulieu commended the former English practice of reckoning the succession duty according to the heir's expectation of life; but this led to the undesirable result of taxing minors more heavily than adults. If any discrimination is to be made, it is much better to consider the interval since the last devolution rather than the probable length of time before the next one, which is never certain. But when direct inheritances are exempt to an amount sufficient to yield a subsistence, no such discrimination is necessary.

3. It has been said that to levy a property tax and an inheritance tax on the same property in the same year constitutes double taxation. This objection also results from regarding the property rather than the tax-payer, and even so is little more than a play upon words. Double taxation, in this opprobrious sense, implies inequality of taxation. The taxing of all property and all income from property, or of all property and certain inheritances of property, is not,

properly speaking, double taxation; that is, it is not unequal taxation, unless one or the other of the two taxes is unjust of itself.

4. When the provisions of existing laws are considered, the cry that the inheritance tax is "a tax upon widows and orphans" will be seen to be utterly absurd. In America, at least, wherever the tax applies to widows and orphans at all the possibility of oppression is precluded by low rates and generous exemptions. Even in the absence of exemptions, as in France, the objection is less real than it at first appears, and applies in a comparatively small number of cases; for in the natural order of things death comes at an advanced age, after the children are grown up and able to take care of themselves.[1]

5. The objections that the tax will discourage industry and thrift, and that it will drive away capital, really apply to the inheritance tax less than to almost any other form of taxation. Death is usually looked upon as a remote event, and occupies no very prominent place in the minds of men; and if a man has the inclination to save property to leave to his heirs, his efforts will not be diminished, but perhaps rather increased, by the thought that one or two per cent of his savings must go to the state. The inheritance tax is less a discouragement to industry than an income tax; it is less a discouragement to thrift than a property tax; and no tax which can be levied on movable wealth will have less effect in driving away capital. The deterrent effect of a tax to be paid after death is not to be compared with that of a tax which must be paid every year.

6. It is sometimes objected that the tax will be evaded by gifts *inter vivos*. On the other hand, one argument in its favor is that by encouraging the distribution of large for-

[1] *Cf.* Leroy-Beaulieu, *Science des Finances*, 4th ed., p. 514.

tunes during the lives of the owners it will tend to bring about a better distribution of wealth. As a matter of fact, men do not give away large amounts of property during life for the purpose of escaping taxation. Most men would rather let the state take a small portion of their property after they are dead than give away the whole while they are alive, even to their nearest relatives. So far as gifts *causâ mortis* are concerned, inheritance taxes almost invariably apply to them equally with bequests.

7. The inheritance tax has been denounced as confiscation, extortion, and a dangerous step toward communism. This is declamation rather than argument; and it is a sufficient answer to point to the numerous theories by which the tax may be explained from the standpoint of pure finance. It is no more confiscation, or extortion, than any other tax; if it appears so it is because it is less familiar, just as the introduction of a property tax where it is a novelty has sometimes been considered unduly oppressive, or a step toward confiscation.[1] New taxes are not apt to be popular with those who expect to have to pay them, however great an improvement they may be upon the old.

IV. Practical Advantages

Whatever may be thought as to the equality of the inheritance tax, it will scarcely be doubted that it complies with Adam Smith's other three canons. It is certain, the cost of collection is not necessarily high, and as to the time of payment it is the most convenient of all direct taxes. Mr. Bolton Hall, when secretary of the New York Tax Reform League, denied its convenience, on the ground

[1] See "Plan of Tax Reform in Prussia," *Journal of Political Economy*, i, 324; translated from the *Bulletin de Statistique et de Législation Comparée*, December, 1892. Witness also the temporary unpopularity of the Hollander Act in Porto Rico.

that almost all estates are pressed for ready money.[1] It must be admitted that the settlement of estates is often attended with considerable expense; but income-yielding property does not cease to be productive when the owner dies, and moreover, it is not essential that the inheritance tax should always be paid out of the current interest. The contemplation of law is that legatees should pay the tax on their specific legacies, and that pecuniary legacies should be diminished by the amount of the tax. In some cases it may be necessary to sell part of the estate in order to pay a heavy inheritance tax, but this is most likely to happen when collateral heirs inherit, and there is certainly no hardship in such cases. The convenience of payment may of course be increased by the English method of allowing payment in instalments; but in Great Britain the requirement of a low rate of interest on deferred payments has resulted in payment in a lump sum in so great a majority of cases as to throw doubt on the necessity of employing the instalment plan at all. On the whole, it seems safe to say that the inheritance tax is paid with greater ease and willingness than most other taxes.

Since the inheritance tax becomes payable while the property taxed is passing under the eye of the probate court, this mode of taxation leaves little opportunity for fraud. During the settlement of an estate its true value can be ascertained more easily and more accurately than at any other time; and it often happens that an estate consisting largely of personal property is appraised for the inheritance tax at many times the figure on which property taxes had been paid during the owner's life. It is not only from the standpoint of the revenue produced that this is important; the justice of a tax also depends upon the practicability of collecting it in all cases in which it is due.

[1] *Equitable Taxation*, p. 54.

The appraisal for the inheritance tax may be used as a check on the property or income-tax returns, and may thus serve to prevent fraud in those forms of taxation also.

The receipts from this source do not come in all at the same time, but are distributed through the entire year, and there are comparatively few payments in proportion to the amount of revenue received. It might be thought that the receipts would vary greatly from year to year, but this is true only in small tax districts. The inheritance tax is not suitable for a local tax, except possibly in the case of very large cities; as a state tax, especially in the larger commonwealths, the returns are remarkably constant from year to year. The larger the taxing districts, the greater will be the tendency to regularity in the product. For this reason a National inheritance tax yields revenue with even greater regularity than the state taxes. But the inheritance tax should not be reserved for temporary or occasional use in emergencies, because it always takes a year or two at least for the receipts to attain the normal level. Yet this tax has the advantage of elasticity, for an increase in the rate of the tax cannot diminish the death-rate; and in case of a great war it might be expected to increase automatically to some extent, not so much from a greater number of deaths among property-owners as from a greater proportion of collateral successions due to the failure of direct heirs.

The inheritance tax cannot be shifted. There are no perplexing questions of incidence to be considered in connection with it. Its effect is known with certainty; the inheritance is diminished by the amount of the tax. Individuals may make a special effort to save an additional amount because of the tax, but this is not an effect that can be relied upon as generally operative.

V. Specific Problems

While some of the special problems which arise in connection with the inheritance tax are peculiar to it, others are similar to the problems of taxation in general. Even the latter, however, may require a different solution in the case of the inheritance tax, because of its double nature as a fiscal exaction and as a regulation of inheritance.

A fundamental question not without difficulty is: Just what is to be regarded as an inheritance for the purpose of taxation? A succession is sometimes defined as any beneficial interest in property accruing in possession or expectancy on the death of any person. The English law, which is very complete in this respect, expressly includes interest accruing by survivorship in the case of joint ownership, by power of appointment, and by the extinction of determinable charges. Life insurance is subject to estate duty, though expressly excluded from liability to succession duty. In this country life-insurance policies have been held to be taxable as property under the general provisions of the New York law, but not under the National legacy tax.[1] Where life insurance is resorted to as a form of investment and very large policies are sometimes taken out, there seems little more reason to exempt them than other investments. The exemptions allowed direct heirs are usually sufficient to cover ordinary amounts of life insurance, but it would of course be possible to allow an additional exemption of moderate amounts of life insurance payable to the immediate family of the deceased, without exempting large investments of this character.

Since the clear value of the succession is what it is intended to tax, the decedent's debts are to be deducted from the assets of his estate. This rule does not always apply in the case of mere probate fees.

[1] Matter of Knoedler, 140 N. Y. 379; 3 Internal Revenue Record 140.

In some countries, especially where the inheritance tax is part of a system of taxes on transfers of property, it is supplemented by a tax on gifts *inter vivos*, at least in so far as such gifts are made a matter of public record. Merely for the purpose of preventing evasion of the inheritance tax, it seems to be sufficient to make the tax applicable to gifts made in contemplation of death, or intended to take effect after the death of the donor. Some statutes presume gifts made within a year of death to have been gifts *causâ mortis*.

In some European countries there are taxes on the property of corporations, in lieu of the inheritance taxes paid by individuals. It may perhaps be considered that the immortality conferred upon corporations is analogous to the privilege of inheritance, and justifies a similar tax; but such taxes probably result rather from the desire to reach property that would otherwise yield no taxes. The privilege of legal immortality and perpetual succession may properly be taken into account in fixing the tax to be paid on the organization of a corporation; but justice does not require an additional tax on corporations in lieu of the inheritance tax, because the stock and bonds of stock companies become subject to the inheritance tax at the death of their owners, while the exemption of societies other than business corporations may be explained as a matter of public policy.

VI. Graduation According to Relationship

The graduation of inheritance taxes according to relationship is nearly universal in practice, and has a sound basis in theory. It may be explained by the extension-of-escheat argument, since the reasons for the institution of inheritance increase with the nearness of the relationship; by the value-of-service argument, for property might often

be transmitted in the direct line even without laws of inheritance; and by the accidental-income argument, because whether the devolution of property indicates an increase of tax-paying ability depends largely on the relationship of the heir to the decedent. It cannot be explained by any theory which regards the inheritance tax as paid in lieu of annual taxes, without recourse to one of these other arguments to justify the heavier taxation of collateral heirs; but the objections sometimes adduced against inheritance taxes would undoubtedly have considerable force if the immediate families of decedents were taxed as heavily as collateral relatives. The practical legislator will take into consideration the fact that it is much easier to collect a high tax from collateral than from direct heirs. Where the graduation according to relationship exists it is found that the highest taxes are paid with the least reluctance.

Graduation according to relationship therefore seems both equitable and necessary, if direct heirs are to be taxed at all. To what extent the graduation should be carried is a more difficult question. As a matter of fact, in case of intestacy the rate always rises at some point to one hundred per cent, either where the knowledge of kinship ends or at some point fixed by law beyond which intestate inheritance does not extend; and this point might well be fixed so as to limit inheritance to those degrees of relationship between which there is a conscious bond of kinship. For the degrees between which inheritance is to operate at all three or four classes ought to be sufficient; one rate for the widow and direct heirs (possibly with some discrimination in favor of minor children), one for brothers and sisters and other very near collateral relatives, and one for more distant relatives and strangers. The relative claims of remote heirs can scarcely be determined with such nicety as to make a dozen different rates more equitable than four.

The claims of adopted children and of relatives by marriage should not be forgotten, though opinions may not agree concerning them.

It has been suggested that nephews and nieces, for example, should pay at a lower rate than uncles and aunts, "because affection flows in far larger measure from above downward than in the opposite direction," the children of a deceased brother or sister taking the latter's place in the affections of their uncles and aunts.[1] Statutes do commonly make this distinction, and many of the German laws discriminate in like manner even between parents and offspring; but the justice of such distinctions may well be questioned. The true basis for the lighter taxation of certain heirs is not the affection felt for them by the decedent, but the same relations of economic interdependence which justify intestate inheritance and compulsory support of indigent relatives; and the duty of support is reciprocal. No one is entitled to a lower rate than the decedent's surviving parents, unless it may be his minor children. Moreover, if there is any force in the view that the tax is on the property rather than on individuals, it should be considered that property inherited by elderly persons is likely soon to become subject to another inheritance tax.

VII. Exemptions

Whether direct heirs are to be taxed at all must depend very largely upon fiscal considerations. The reasons which justify graduation according to relationship lead also to the conclusion that the entire exemption of direct heirs is no injustice; but as the great majority of successions are between immediate relatives, their exemption will have a very decided effect upon the revenue. The exemption is some-

[1] Theodor Hilgard, *Zwölf Paragraphen über Pauperismus und die Mittel, ihm zu steuern*, 1847.

times extended to brothers and sisters, and even to nephews and nieces; but when it is carried so far as this there is little left to tax. Indeed, an inheritance tax is of comparatively slight importance unless it extends to direct heirs; but when they are included there should be an exemption of a sufficient amount to prevent hardship. The amount of the exemption must of course be fixed more or less arbitrarily. It would seem, however, that for the widow and minor children the exempt amount should be such as to yield a revenue sufficient for support. Very small amounts going to collateral relatives may also well be exempted, if only as a matter of convenience.

The exemption may be based upon the size either of the entire state or of the separate shares, or both facts may be taken into consideration. This is a point so commonly left obscure in carelessly drawn statutes that it has very often been referred to the courts for construction, and it has sometimes been determined without much regard for the language employed. The basis of the exemption will naturally depend upon the view of the character of the tax held by the legislature. If the inheritance tax be considered as a payment of back taxes, the estate will of course be taxed as a whole; but the principle of ability indicates that the determining factor should be the size of the separate shares. The size of the whole estate obviously makes little difference to the individual heirs except as it affects the size of their several portions. By the application of the exemption to each share, in the case of direct inheritances, the effect of the size of the family upon tax-paying ability can be practically recognized more conveniently than in any other form of taxation.

An amount equal to the exemption should be deducted from the value of all inheritances which are taxed; for otherwise a difference of a few dollars in an inheritance

may require the payment of a tax even greater than the difference. This is a rule which holds true of taxation in general, but it applies with especial force to the inheritance tax because of the greater size of the exemptions. The neglect of this principle in framing particular inheritance-tax laws has called forth some of the strongest arguments which have been advanced against them, and the resulting inequality has even been held to be unconstitutional.

Bequests for public, benevolent, and educational purposes may well be exempted, for in such cases, if the gift is wise, the whole amount accrues to the benefit of the community. It is not good public policy to tax a bequest for a public purpose more than a bequest to an individual, even a direct heir; and it is rather inconsistent to demand any inheritance tax from an institution whose beneficent offices have led it to be exempted from other taxation.

VIII. Progressive Rates

The question of progression in the inheritance tax is in some sense a part of the question of progressive taxation in general; yet many writers and statesmen have considered inheritances a peculiarly fit subject for progressive taxation. On this point Mill wrote as follows:

> It is not the fortunes which are earned, but those which are unearned, that it is for the public good to put under limitation. . . . I conceive that inheritances and legacies, exceeding a certain amount, are highly proper subjects for taxation: and that the revenue from them should be as great as it can be made without giving rise to evasions, by donation *inter vivos* or concealment of property, such as it would be impossible adequately to check. The principle of graduation (as it is called), that is, of levying a larger percentage on a larger sum, though its application to general taxation would be, in my opinion, objection-

able, seems to me both just and expedient as applied to legacy and inheritance duties.[1]

An inheritance tax imposed for the purpose of diffusing wealth will necessarily be progressive, for otherwise it would diminish small successions in the same proportion as large ones; and it might even be so contrived as to limit inheritance and bequest absolutely. For example, if it were desired to fix the limit in the neighborhood of half a million dollars, the end could be accomplished by means of a progressive inheritance tax levied according to some such schedule of rates as the following:

		Per cent.			*Per cent.*
On the first	$10,000	0	On the sixth	$20,000	12
" second	10,000	1	" fifth	30,000	15
" third	10,000	2	" fourth	50,000	20
" fourth	10,000	3	" fifth	50,000	25
" fifth	10,000	4	" sixth	50,000	30
" sixth	10,000	5	" fourth	100,000	40
" seventh	10,000	6	" fifth	100,000	50
" eighth	10,000	7	" sixth	100,000	60
" ninth	10,000	8	" fifth	150,000	75
" tenth	10,000	10	" fourth	250,000	90
			" excess above	$1,000,000	100

This scale would make the largest amount possible to inherit somewhat less than half a million dollars; namely, $463,500. Of course the limit could be fixed at any desirable point.

One objection which has been raised against progressive

[1] *Principles of Political Economy*, bk. v, chap. ii, § 3. In the first edition Mill's opposition to progressive taxation in general is more pronounced, and his advocacy of progressive inheritance taxes less emphatic: "The principle of graduation (as it is called), that is, of levying a larger percentage on a larger sum, though its application to general taxation would be a violation of first principles, is quite unobjectionable as applied to legacy and inheritance duties."

taxation in general is that it has no logical limit. This objection will not apply to a scale which is carried to one hundred per cent. The scale is still arbitrary, it is true; the point at which the inheritance is to be limited must be fixed by considerations of general policy. But one hundred per cent is not an arbitrary point at which to discontinue the progression, for to go beyond that point would be to make a larger inheritance less than a smaller one.

Such high rates will hardly be applied to property or income taxes, but their application to inheritance taxes would be a much less extreme measure, for it would act as a restriction only on the inheritance of property, leaving the rights of independent acquisition and possession untouched. While a limitation of the right of property itself would be a radical step toward equality of wealth, a limitation of inheritance would be only a step toward equality of opportunity. Inheritance evidently serves a useful purpose in so far as it gives young men a fair start in life and provides for the needs of widows and young children; further than that it is difficult to justify it by any consideration of social expediency. Not only are inheritance and bequest no necessary part of the institution of private property, but the reasons which justify private property have little application to them. Private property is a necessary and useful institution because it promotes industry. Can this be said of inheritance?

There are at least three rather distinct types of young men who inherit fortunes. Those who have been brought up in their fathers' business, and whose tastes and training are both in the direction of business affairs, may make a better use of their wealth than their fathers did. To a man of another type, educated in the schools and with a developed ethical sense, but with no special training and little inclination for business, sudden responsibility for the wel-

fare of hundreds of employees and for the financial standing of the firm or company sometimes comes as a burden almost greater than he can bear. The third class, probably larger than either of the others, consists of those whose idea of the use of money is spending it in selfish gratification. The demoralizing effect of wealth upon this class is too conspicuous to need proof; but a far more wide-reaching danger lies in the possible disturbance of business through the whims and inexperience of hereditary stockholders and directors. Scholars and business men unite in calling attention to this danger. A leading sociologist who insists upon the fiduciary character of the managerial element in capitalistic interprise [1] predicts that for a father to bequeath to his son a controlling interest in a factory or a railroad will sometime be perceived to be "monstrous." [2] Many will agree with him at least as regards the railroad and other public-service corporations. Mr. Carnegie applies the same principle to banking and other business, saying:

> The fond parent who invests his son with imaginary business qualifications, and places him in charge of affairs—upon the successful management of which the incomes of thousands depend—incurs a grave responsibility. Most of the disastrous failures of the day arise from this very cause. It is as unjust to the son as to the community. Out of seven serious failures during a panic in New York, five were traced to this root. One of these sons is an exile to escape punishment for breaking a law which he did not clearly understand. . . . The banker who hands over his business to sons, because they are sons, is guilty of a great offense.[3]

[1] *American Journal of Sociology*, I: 578-581.

[2] Albion W. Small, "Private Business is a Public Trust," *American Journal of Sociology*, I: 276, 287.

[3] *The Gospel of Wealth*, p. 56.

The existence of aristocracies and leisure classes has sometimes been historically justified by the salutary consequences of their recognition of the principle that *noblesse oblige;* but in America the responsibilities of wealth are so rarely recognized that our aristocracy of wealth bids fair to make itself quite unendurable.

There is one possible point of view from which inheritance may be regarded as a necessary part of the right of private property. If property be regarded as belonging to the family as a whole rather than to any of the individual members, unrestricted inheritance within the family follows almost as a necessary consequence. But in America the right of inheritance within the family is already greatly restricted by an almost unlimited freedom of bequest; a system of law which recognizes no *Pflichttheilsrecht* or *portion légitime* cannot be said to rest upon the family idea of property. Our whole system of descent and distribution seems to be contrived not so much to secure any rights to the surviving family as to carry out the supposed wishes of the deceased. Of the two institutions, inheritance and bequest, inheritance is the older historically, and would seem to have the better reason for its existence. Its basis is found in the fundamental facts of family life, and in the duty of support which the father owes the children. It does not follow, however, that even the right of inheritance within the family should be unlimited. No ethical or economic necessity requires a wealthy father to leave all his accumulations of a life-time to his sons; it may be better for them in every way to be left with only a moderate amount of property. The inheritance of a large fortune is less apt to prove an incentive to industry than an encouragement to idleness and dissipation.

The limitation of inheritance through progressive taxation is thus abundantly justified. But a moderately pro-

gressive inheritance tax need not be considered a limitation of inheritance; it may be explained and justified by the general principles of taxation. Progression is sometimes defended on the "compensatory" theory as a compensation for state interference, on the ground that inequalities of fortune are due in part to positive law and state action; or on what has been termed the "special-compensatory" theory as tending to counterbalance the inequality of taxes which fall more heavily on the poor than on the rich. If the inheritance tax be regarded as a payment of back taxes, the justice of progression is especially evident, because large fortunes undoubtedly escape taxation during the owners' lives to a greater extent than small ones. Yet this is only another way of saying that taxation in general is actually regressive; and while the back-taxes argument has little weight as far as justice between individuals is concerned, as applied in this way to whole classes of tax-payers it has undoubted force. Finally, progressive inheritance taxes, like other progressive taxes, may be explained on the theory of marginal utility,[1] or on the simple principle that tax-paying ability increases more rapidly than wealth, or that the sacrifice involved in paying a proportional tax is less for the wealthy than for the poor. All the arguments for progressive taxation in general apply with full force to the inheritance tax, and seem thoroughly to justify progression. It is to be considered, too, that in the case of the inheritance tax progression is eminently practicable, while its application to some other forms of taxation would be attended with much greater difficulty.

The most effective argument against progressive taxation is what may be called the political argument, which has

[1] For these various theories see Seligman, *Progressive Taxation*, or "The Theory of Progressive Taxation," *Political Science Quarterly*, June, 1893.

been most ably presented by Mr. Lecky in Great Britain and by Mr. William D. Guthrie in this country. Mr. Lecky is by no means unqualifiedly opposed to progressive taxation, but he has uttered the following warning against carrying it too far:

Highly graduated taxation realises most completely the supreme danger of democracy, creating a state of things in which one class imposes on another burdens which it is not asked to share, and impels the State into vast schemes of extravagance, under the belief that the whole cost will be thrown upon others.[1]

Arguing before Governor Black of New York against the progressive inheritance-tax bill passed by the legislature in 1897, Mr. Guthrie said:

The great danger of all democracies is that one class votes the taxes for another class to pay. Heretofore, our bulwark has been that, as all taxes were equally and uniformly imposed, classes could not be discriminated against, and this protected all. . . . Introduce the policy of graduated taxes, establish the doctrine that they are permissible under our system, and the whole burden of taxation can be thrown on a few rich.

The only possible answer to this argument is that in none of the countries in which progressive taxation has been employed has it been carried to such extremes as to oppress the rich, nor do democratic legislatures in other respects often show flagrant disregard for property rights. The distrust of democracy expressed in Mr. Guthrie's warning is natural enough, and not irrational as an *a priori* theory, but it has no foundation in history or comparative legislation. Governor Black carried it to its logical conclusion when he declared: "In this country the right of suffrage is carried too far."

[1] *Democracy and Liberty*, i, 347.

Equity requires that each rate in a progressive schedule should be applied only to its respective fraction of the inheritance; that is, only to the excess above the amount to which the next lower rate applies. Otherwise, the progressive scale will result in unnecessary inequalities, its effect being in some cases to make a larger inheritance actually less than a smaller one. It is contrary to all justice to levy the higher rates on the entire inheritance. The only disadvantage of the method of fractional progression, as compared with the other, is that, the rates being the same, the revenue will be less; but the same revenue can be secured by simply increasing the rates. There is no occasion to take fright at the nominally high percentages of a fractionally progressive scale, for the actual tax will always fall below the maximum percentage. The Wisconsin schedule, which has already been copied by California and Idaho, is a good model for other states to follow, in form even if not in the actual figures employed.

IX. Calculation of Revenue

Although some estates become liable to inheritance taxes oftener than others, it is true on an average that an amount of property equal to the total privately-owned wealth of a country changes hands by inheritance or bequest once in a generation, the length of a generation in this sense of the word being the number of years by which children on an average survive their parents. This is practically equivalent to the average age of parents at the births of their children; for, assuming that the average duration of life does not materially change from one generation to the next, children will follow their parents in death by the same number of years as in birth. A number of calculations based upon the vital statistics of France practically confirm the tradi-

tional rule of three generations to a century;[1] if the estimate of Herodotus was accurate at the time it was made it has not been modified as much as might be expected by later marriages and increased duration of life, which, indeed, may have offset each other.

The average survival of heirs to their predecessors may not be quite the same as the average survival of children to parents, but the cases in which property descends directly to grandchildren should be nearly counterbalanced by those in which it passes to parents or members of the same generation as the decedent, and an abnormally long interval between successions is almost sure to be followed by one abnormally short. De Foville calculated the interval between successions as being thirty-six years.[2]

Without trying to be too precise, it may be estimated that from one thirty-third to one thirty-sixth of the privately-owned wealth of a country will change hands annually by inheritance, bequest, or gift *causa mortis*; or, allowing for bona-fide gifts *inter vivos* too much in advance of death to be reached by inheritance taxes, at least one-fortieth of the privately-owned wealth would become subject to such taxes every year, if there were no exemptions. Giffen's estimate of the wealth of Great Britain based on the income-tax returns was about equal to fifty times the amount becoming subject to death duties each year,[3] but all legacies under the value of twenty pounds were exempt. The generous ex-

[1] Adolphe Coste, "Observations sur la statistique successorale," *Journal de la Société de Statistique de Paris*, 40: 188. The mathematician Fourier found the length of a generation in Paris to be 33.31 years; Vacher obtained 33.06 years for the whole of France, while Turquan made it 34 years, 1 month and 6 days (25 years 9 months for the mothers of illegitimate children); weighted average, 33.37 years.

[2] *Journal de la Société de Statistique de Paris* (Aug. 1882).

[3] *Essays in Finance*, pp. 181, 182.

emptions of American tax laws introduce a complication for which it is difficult to make accurate allowance, since the distribution of wealth varies from place to place and is known for comparatively few states. Spahr's researches appear to indicate that an exemption of all estates below $5,000 in value would eliminate only one-thirteenth of the wealth probated in the State of New York, but in Massachusetts one-ninth would be eliminated by a similar exemption, or one-fifth by an exemption of all below $10,000.[1] The proportion of the privately-owned wealth of either state annually becoming subject to inheritance taxes should be at least one-fiftieth, even if the $10,000 exemption applied to all estates.

The allowance to be made for different rates applying to different classes of relatives is comparatively simple. We know that two-thirds of the personal property and three-fourths of the real estate which passes by inheritance or bequest goes to direct heirs, and if necessary the small fraction passing to collateral heirs may be subdivided according to the degree of relationship;[2] but the revenues which an inheritance tax should yield may be approximately estimated mainly on the basis of the rate for direct heirs, especially where it applies to brothers and sisters also. Thus where direct heirs are taxed one per cent, with a $10,000 exemption, and collateral heirs at higher rates, it is safe to say that the tax should yield annually somewhat more than one-five-thousandth of the privately-owned wealth of the state. That this estimate is by no means excessive is shown by the experience of New York, which, with taxable property estimated by the Census Bureau to be worth $13,440,000,000 (besides securities representing much property in other states), receives in inheritance taxes about $5,000,000 a

[1] *Present Distribution of Wealth in the United States*, pp. 64, 179, 180.

[2] See pp. 93, 94, 96, *supra*.

year, a ratio of 1 to 2688. An examination of the tables in the appendix will show that some of the states, however, receive much less from this source than they should receive.

The annual receipts from the National tax on legacies and distributive shares of personal property also approximated $5,000,000 when the taxing machinery was in good working order. This was only about one seventy-two hundredth of the personal property in the country (shares of railroads and other public-service corporations being counted as personalty), but in some parts of the country the exemption of all personal estates below $10,000 in value very materially cuts down the amount of property subject to the tax. The tables in the appendix show that in most of the states the state taxes yield more revenue than did the National tax, which applied to personal property only. In Connecticut, however, the state tax is levied at such low rates and with such generous exemptions for direct as well as collateral heirs that it yields less than the National tax did; while in Montana the comparative unimportance of the state tax is due at least partly to its application in the case of direct heirs to personal property alone. In Nebraska, however, the meager returns indicate either a wonderfully healthful climate or very lax administration.

X. Conclusion

The inheritance tax seems to be pre-eminently an institution of democracy. It is found in nearly every civilized country on the globe, but it is mainly in the most democratic countries—Great Britain, France, Switzerland, Canada, the Australasian colonies—that it reaches its fullest development, with high progressive rates, and becomes an important source of revenue. The United States seemed until lately to be an exception to this rule, but the increasing popularity of this mode of taxation and its rapid extension

from state to state during recent years has radically changed the situation.

That the inheritance tax is very commonly regarded as something more than a purely fiscal measure is shown by frequent proposals to use the proceeds for certain benevolent or educational purposes. Such proposals have sometimes borne fruit in legislation. It is interesting to note that the earliest inheritance tax of which we have any definite knowledge was for the purpose of pensioning old soldiers, and that some of the recent enactments on the subject in the United States and Canada have been for charitable and educational purposes. In a small state, it would be unwise to make these special funds wholly dependent on the inheritance tax, because the receipts would be apt to be irregular in amount; but there can be no objection to making the proceeds of this tax part of a special fund which is supplied from other sources also.

The inheritance tax seems admirably adapted to replace the antiquated personal-property tax in the state budgets. The experience of New York with the inheritance tax, and the experience of a number of states with corporation taxes, show that by these two methods of taxation alone most if not all of the state governments could pay all their expenses, leaving the taxes on property to the local political divisions. Such a separation of state and local revenues is most desirable; it would do away with the necessity of apportionment and with the farce-comedy called state "equalization," and would make it possible to grant to the localities some degree of self-government in matters of taxation.

As long as the state inheritance taxes are no heavier than at present, a Federal tax might perhaps be superimposed upon them, as was done temporarily during the Spanish war, without making the burden excessive. The special

reasons which make a separation of state and local revenues desirable do not apply to the case of state and National taxation. It would be very unfortunate if the imposition of a National inheritance tax should retard the development of inheritance taxes among the states, where they are needed as an aid in improving the general system of taxation; but it is worthy of note that in 1901, with the heavy war tax still on the statute book, seven states adopted this mode of taxation, while two others emphasized anew their reliance upon it—Maine by increasing the rate and Massachusetts by repealing an exemption in favor of small estates. No other year before or since can equal this record. Possibly the National tax was assumed to be a temporary measure; and again, some states may have waited for the repeal of the war revenue act, though the statistics make it seem improbable. But while "both the National and the state governments, moving in their respective orbits, have a common authority to tax many and diverse objects," [1] and although this form of double taxation is far less objectionable in practice than the levying of both state and local taxes on property assessed locally, yet it might be said to argue, if not a breach of federal comity, at least a certain lack of system in the Nation's finances.

The case against a National inheritance tax is forcibly stated in the following memorial to Congress adopted in 1901 by the legislature of Wisconsin: [2]

The memorial of the legislature of Wisconsin to the Congress of the United States respectfully shows that in the opinion of the legislature the imposition of inheritance or suc-

[1] Knowlton *vs.* Moore, 178 U. S. 41, 60.

[2] Laws of 1901, p. 705. The National Conference on State and Local Taxation, meeting in November, 1907, also adopted a resolution recommending that inheritance taxes be left exclusively to the states.

cession taxes belongs, except in certain exigencies, to the domain of state taxation; that the emergency of war which may have justified the feature of the national war revenue act of June thirteenth, 1898, levying a tax on legacies and distributive shares of personal property has now passed away; that many of the states have already adopted, and many more will soon adopt, such inheritance tax laws, and if such feature of the national act remains in force, a large amount of property in the country will be subjected to double taxation, once by the federal government and again by the state; and that it is expedient, and would be good governmental policy, that the part of such national revenue act imposing a tax on legacies and distributive shares be repealed and this feature of taxation be left entirely to the jurisdiction and control of the states. It is the purpose of this memorial, therefore, to respectfully request of Congress the repeal of said feature of the revenue act during the present session.

But while the states need the inheritance tax to replace the tax on personal property, the National government also should have a direct tax among its sources of revenue, in order that the tariff may be revised without fear of a deficit, and with more regard to social and industrial conditions than to the needs of the treasury. Shall this be an inheritance tax, or some kind of an income tax? It should be borne in mind that the income tax annulled by the Supreme Court in 1895 was only one form of income tax, and a very crude and imperfect form. In order to be practically enforceable, as well as constitutional, an income tax should be mainly a tax on business. As the states cannot very effectively reach the proceeds of interstate commerce, so much at least may well be taxed by the National government; and in order that the inheritance tax may be left exclusively to the states, it may be necessary for Congress to tax intra-state business as well.

APPENDIX

Proceeds of Inheritance Taxes in the United States

The inheritance taxes paid in the various states now amount to about $10,000,000 a year. Below are shown the receipts from this source for four years past:

PROCEEDS OF STATE INHERITANCE TAXES, 1902–1906, IN COMPARISON WITH THE ESTIMATED TRUE VALUE OF TAXABLE WEALTH IN EACH STATE, 1904.

(In most cases the receipts reported are net receipts, exclusive of commissions, etc.)

State.	Taxable wealth, 1904 (millions of dollars).	Inheritance-tax receipts.			
		1902–03.	1903–04.	1904–05.	1905–06.
Arkansas	781	$1,605	$66	$755	$850
California	3,881	[1]285,868	[1]286,561	[1]532,713	[1]292,705
Colorado	1,101	[2]5,960	[2]5,961	[2]48,646	[2]48,647
Connecticut	1,317	249,730	265,781	284,117	274,259
Delaware	221	1,618	3,272	3,102	
Illinois	8,534	[2]460,857	[2]460,858	[2]688,312	[2]688,312
Iowa	3,943	[2]117,333	[2]141,721	[2]141,722	190,748
Louisiana	980	....	10,694	57,001	86,655
Maine	749	31,227	73,899	69,076	70,534
Maryland	1,417	67,115	91,559	76,665	107,820
Massachusetts	4,533	506,147	562,193	694,181	712,720
Michigan	3,149	[1]163,572	[1]181,539	187,036	289,025
Minnesota	3,229	3,422	....	....	159,455
Missouri	3,598	142,564	122,030	305,551	213,131
Montana[3]	636	[2]8,506	[2]8,506	[2]6,038	[2]6,038
Nebraska	1,949	[2]2,804	[2]2,805	[2]2,120	[2]2,120
New Hampshire	493	....	....	....	3,277
New Jersey	3,022	138,932	438,635	202,668	200,780
New York	13,440	4,665,736	5,428,052	4,627,051	4,713,311
North Carolina	812	....	16,000	5,324	4,673
Ohio[3]	5,693	39,276	78,209	406,744	124,457
Oregon	766	....	6,826	23,192	15,290
Pennsylvania	10,814	1,300,835	1,080,578	1,677,185	1,507,962
South Dakota	629	....	....	....	1,450
Tennessee	1,058	[2]56,007	[2]56,007	[2]34,310	[2]34,310
Utah	407	44,144	39,393	9,971	39,889
Vermont	342	29,440	37,227	41,058	40,581
Virginia	1,235	19,612	12,797	20,215	28,742
Washington	986	8,292	25,774	[2]33,267	[2]33,268
West Virginia	814	1,367	6,443	10,495	26,052
Wisconsin	2,734	....	4,320	125,965	103,917
Wyoming	256	....	....	[2]4,373	[2]4,373

[1] Refunds deducted.

[2] One-half the receipts for two years.

[3] The figures here given represent the state's share only; that is, in the case of Montana three-fifths of the total receipts, and in the case of Ohio, three-fourths of the net receipts.

The following table shows the receipts from the National tax on legacies and distributive shares of personal property during the two fiscal years when it was most fully in operation, in comparison with the estimated value of all personal property in each state or collection district:

PROCEEDS OF THE NATIONAL TAX ON LEGACIES AND DISTRIBUTIVE SHARES OF PERSONAL PROPERTY, 1900–1902, IN COMPARISON WITH THE ESTIMATED TRUE VALUE OF PERSONAL PROPERTY, 1900.

STATE.	Value of personal property,[1] 1900 (millions of dollars).	Legacy-tax receipts.	
	1900.	1900–1901.	1901–1902.
Alabama	401	$1,353.10	$5,935.90
Arkansas	296		2,062.21
California and Nevada	1,235	88,518.41	61,497.39
Colorado and Wyoming	596	2,086.26	7,748.33
Connecticut and Rhode Island	704	358,954.73	641,096.10
Florida	168	282.27	....
Georgia	453	3,144.68	24,812.96
Hawaii	.....	5,303.76	1,051.56
Illinois	2,711	345,636.55	325,964.84
Indiana	1,106	9,355.47	19,194.24
Iowa	1,316	19,533.59	44,274.50
Kansas, Oklahoma and Indian Territory	1,278	6,964.17	107.20
Kentucky	569	12,934.06	13,350.17
Louisiana and Mississippi	703	20,186.62	20,076.69
Maryland, Delaware, and District of Columbia	759	[2]217,581.10	[2]99,417.05
Massachusetts	1,442	452,944.61	559,296.97
Michigan	1,035	66,498.47	67,780.66
Minnesota	1,056	17,961.27	23,147.10
Missouri	1,243	78,078.32	91,011.72
Montana, Idaho, and Utah	665	2,843.40	162,744.19
Nebraska	751	1,732.90	10,547.10
New Hampshire, Maine, and Vermont	652	67,813.64	114,115.15
New Jersey	1,107	295,935.17	79,861.37
New Mexico and Arizona	254	455.71	660.55
New York	4,533	2,314,425.51	1,608,843.83

[1] Including stocks and bonds of railroads, etc.

[2] Including Accomac and Northampton Counties, Virginia.

PROCEEDS OF THE NATIONAL TAX ON LEGACIES, ETC.—*Concluded.*

STATE.	Value of personal property,[1] 1900 (millions of dollars).	Legacy-tax receipts.	
	1900.	1900–1901.	1901–1902.
North Carolina	343	$2,577.13	$3,215.10
North and South Dakota	500	[2]	83.93
Ohio	2,100	175,067.92	69,321.70
Oregon and Washington	602	[3]141.21	[3]6,641.72
Pennsylvania	3,917	571,019.10	660,753.94
South Carolina	247	2,780.25	6,793.95
Tennessee	445	6,395.58	7,383,18
Texas	1,013	18,264.77	18,643,32
Virginia	508	8,373.08	15,791.19
West Virginia	326	2,865.09	10,564.64
Wisconsin	943	33.890.78	62,176.07
Total	35,980	$5,211,898.68	$4,842,966.52

[1] Including stocks and bonds of railroads, etc.

[2] Included with Nebraska.

[3] Including Alaska.

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